

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1140

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PJS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

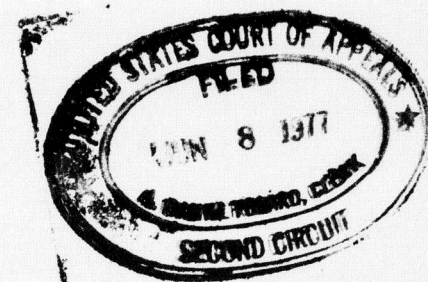
UNITED STATES OF AMERICA,

Appellee,

v.

DAVID STIRLING, JR., WILLIAM G.
STIRLING, HAROLD M. YANOWITCH,
EDWIN SCHULZ and RUBEL L.
PHILLIPS,

Defendants-Appellants



JOINT APPENDIX OF DEFENDANTS-APPELLANTS
DAVID STIRLING, JR., WILLIAM G. STIRLING AND HAROLD M. YANOWITCH

Volume I - Pages A 1 to A 225

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HAWKINS, DELAFIELD & WOOD
Attorneys for Defendants-Appellants
David Stirling, Jr., William G.
Stirling and Harold M. Yanowitch
67 Wall Street
New York, New York 10005

PAGINATION AS IN ORIGINAL COPY

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TO OFFENSE NO
OR OFFENSE NO
OR MEANOR M
BY DAY

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0845

STIRLING, DAVID JR.,

(LAST FIRST MIDDLE)

Case Filed
Mo Day

07 27

No of Date
05

76 0685 01

Yr Docket No Det

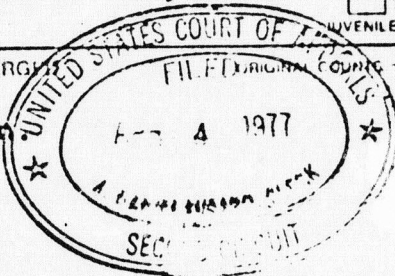
U.S. MAG.
CASE NO.

BAIL • RELEASE

☐ AMT ☐ Fugitive
☐ Denied ☐ Set ☐ Pers Recog
☐ PSA
\$ 000
Date
☐ Bail Not Made
☐ Status Changed (See Docket)
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Prty Cust
☐ Other

15:77q(a)&X
15:77x
18:1341
18:371

Securities fraud.
False registration.
Mail fraud.
Consp. so to do.



SUPERSEDING
COUNTS

II KEY DATES & INTERVALS

ARREST

INDICTMENT

ARRAIGNMENT

TRIAL

SENTENCE

Arrested 8-12-76	Indictment 7-27-76	Arraignment 8-12-76	Trial Vair Dira Trial Began 12-23-76 Trial Ended 1-29-77	Sentence Disposition of Charges 1-29-77 3-11-77 On All Charges On Lesser Offenses WOP WP On Government's Motion
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MAGISTRATE		INITIAL/NO	OUTCOME
Search Warrant Issued Returned	Summons Issued Served	Arrest Warrant Issued Served	Offense (in Complaint)
INITIAL APPEARANCE DATE	PRELIMINARY EXAMINATION	REMOVAL HEARING	INTERVENING INDICTMENT
DATE	DATE	DATE	DATE
WAIVED	NOT WAIVED	TYPE NUMBER	
			DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney at East

W. Cullen Mac Donald
791-0005

ATTORNEYS

Albert J. Gaynor
202 Mamaroneck Ave,
White Plains, NY
914-761-2399

DATE	DOCUMENT NO.	PROCEEDING	EXCLUDABLE DELAY
7-27-76		Filed indictment.	
08-05-76		Pleading adjourned to 8-12-76..Goettel, J. Assigned to Frankel, J.	
8-12-76		Deft (and Atty Albert Gaynor present). Enters a NOT GUILTY plea. Bail is set in the amount of \$5,000. Surety Bond to be posted by 4 PM today. Bail limits extended to England, Belgium, France, Scandinavian Countries and Florida, U.S.A. Deft ordered 2/P.	
8-12-76		Filed Deft's Appearance Bond in the amount of \$5,000.00. Name of Surety: Midland Insurance Co. dated 8-12-76. Acknowledged by the Clerk.	
8-16-76		Filed Notice of Appearance of Atty, Albert J. Gaynor.	
8-31-76		P.T.C. held. Trial set for 12-13-76....FRANKEL, J.	
9-27-76		Fld Govt's affid inopposition to deft's motions to strike paragraph 16 from the indict	
9-27-76		Fld govt's memorandum, The Govt respectively requests that the motions to strike paragraphs 9 & 16 be denied in all respects	

(con't on Pg. 2)

OPPOSITE THE APPLICABLE DECKET ENTERED SHOW IN SECTION V ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 U.S.C. § 3161(h)

DATE	PAGE 2 DOCUMENT NO.	IV PROCEEDINGS (continued)	PAGE TWO	V EXCLUDABLE DELAY			
				Interloc. Order (A)	Final Order (B)	Time Used (C)	Total Days (D)
09-29-76		Filed Govt's Notice of Motion for an Order pursuant to Rule 16 of the F.R.C.P.					
09-29-76		Filed Govt's Memorandum of Law in Support of it's Motion for Discovery and Inspection.					
09-29-76		Filed Govt's Request for a Bill of Particulars.					
09-29-76		Filed Govt's Memorandum Opposition to the Rule 7(f) requests by the Defts.					
11-03-76		Filed Govt. Affidavit and its attachment in accordance with pre-trial order entered.					
11/5/76		Filed Gov't Affidavit in response to Albert J. Gaynor's letter dated 11/3/76.					
11-05-76		Filed Large Brown Envelope - Ordered that the order to show cause signed 11-4-76 by Judge Frankel for a protective order, Ret; 11-8-76, the Memorandum in support and affidavit of John H. DeBoisblanc dated 11-1-76 are all ordered SEALED and Placed in Cashiers Vault.....FRANKEL, J.					
12-13-76		Filed Govt's Answer to Motion Barring of witnesses Giovino and Levering. 8-5-76					
12-13-76		Filed Govt's Answer to Motion Barring of witnesses Giovino and Levering. 10-1-76					
12-13-76		Filed Govt's Answer to Motion Barring of witnesses Giovino and Levering. 10-12-76					
12-7-76		Filed Govt's Answer to Motion Barring of witnesses Giovino and Levering.					
1-1-77		Filed ONE BROWN ENVELOPE to be sealed and impounded.So ordered, Frankel, J.					
1-4-77		Filed ONE BROWN ENVELOPE to be sealed and impounded.... SO ordered, FRANKEL, J.					
1-4-77		Filed ONE BROWN ENVELOPE to be sealed and impounded... So ordered, FRANKEL, J.					
12-22-76		Jury Trial, Atty Pres., Trial begins.					
12-23-76		Trial Cont'd					
12-27-76		" "					
12-28-76		" "					
12-29-76		" "					
12-30-76		" "					
1-3-77		" "					
1-4-77		" "					
1-5-77		" "					
1-6-77		" "					
1-7-77		" "					
1-10-77		" "					
1-11-77		" "					
1-12-77		" "					
1-13-77		" "					
1-14-77		" "					
1-15-77		" "					
1-17-77		" "					

Cont'd in page 3

FEE AND COLLECTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS
1-18-77	Trial Cont'd
1-19-77	" "
1-20-77	" "
1-21-77	" "
1-22-77	" "
1-24-77	" "
1-25-77	" "
1-26-77	" "
1-27-77	" "
1-28-77	" "
1-29-77	" " & concluded. Jury returns a verdict of GUILTY on each of counts 1 thru 9. P.S.I. ordered. Sentence set for 3-11-77. Bail cont'd in addition \$20,000. P.R.N. signed by another person, plus debt is set and to be posted within one week passport to be surrendered until cond. met. So ordered ... BRIEANT, J.
1-31-77	Filed APPEARANCE BOND for \$20,000.00 with co-signer. dated 1-31-77.
2-9-77	Filed transcript of record of proceedings, dated 12-22, 23, 27 & 28-76
2-9-77	Filed transcript of record of proceedings, dated 12-29, 30-76 1-5-77
2-9-77	Filed transcript of record of proceedings, dated 1-4, 5 & 6-77
2-9-77	Filed transcript of record of proceedings, dated 1-7, 10, 11-77
2-9-77	Filed transcript of record of proceedings, dated 1-14, 15, 14 & 15-77
2-9-77	Filed transcript of record of proceedings, dated 1-17, 18 & 19-77
2-9-77	Filed transcript of record of proceedings, dated 1-20, 21 & 22-77
2-9-77	Filed transcript of record of proceedings, dated 1-24, 25 & 26-77
3-11-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER- THE debt is hereby committed to the custody of the Atty Gen, for impr for a period of ONE (1) YEAR on each of counts 1 thru 8 to run concurrently with each other. Fined \$10,000. on each of counts 1 thru 8 to run concurrently with each other. Fine is a committed fine and is to be paid during period of probation with arrangements made by probation office. Imposition of prison sentence as to count 9 is suspended. Debt placed on unsupervised probation for a period of ONE (1) YEAR to commence upon release from confinement. Debt. cont'd on present bail pending appeal. So ordered FRANKEL, J. All copies issued.
3-16-77	Filed NOTICE OF MOTION for an order pursuant to Rule 7(b) releasing the transcript of proceedings herein to the firm of Hawkins, Delafield & Wodd, etc. RET 3-21-77.
3-18-77	Filed DEFT'S NOTICE OF APPEAL to the USCA from the Judgment of the Court entered on the 3-11-77. Mailed Notices to US, Atty and Counsel for the Debt.
3-25-77	Filed MEMORANDUM concerning copies and prices of transcripts. so ordered FRANKEL, J. m/n
3-31-77	Filed AFFIDAVIT of Angus Macbeth in opposition of debt's motion to make a photostatic copy of the transcript of this trial.
3-30-77	Filed Memo-endorsed on debt's motion filed 3-16-77. Motion withdrawn. So ordered FRANKEL, J. m/n.
3-31-77	Filed transcript of record of proceedings, dated 3-14-77
4-1-77	Filed Government's memorandum of law on admissibility of debt's testimony at hearing held by trustee in Bankruptcy.
4-1-77	Filed memorandum in support of debt, D. Stirling et al to sustain objection to testimony.

PROCEEDINGS

DATE	
1-77	Filed transcript of proceedings dated January 27, 28, 29-1977
1-77	Filed Government's memorandum of law on scope of cross examination.
1-77	Filed Mem. David Stirling, Jr., William G. Stirling & Harold M. Yanowitch's requests to charge.
1-77	Filed G. Stirling, William Stirling & Harold Yanowitch's proposed exam of jurors.
1-77	Filed Govt's. proposed examination of prospective jurors.
1-77	Filed Government's answer to motion for barring of witnesses Giovino & Levering.
1-77	Filed Defts. M. Stirling, W. Stirling & H. Yanowitch's motion to preclude the Government's use of Salvatore Giovino & Richard Levering as witnesses.
1-77	Filed Affidavit in opposition to Government's motion for discovery & inspection.
1-77	Filed letter dated Mar 31-76 of Asst. U.S.A. MacDonald with proposed scheduling order to Frankel, J.
1-77	Filed memorandum in support of defts. application to sustain objection.
1-77	Filed answer of the U.S. to defts. Metelli motions.

PETTY OFFENSE MO MINOR OFFENSE MO MISDEMEANOR MO FELONY F	JURY TRIAL REQUEST 0845 0208 1	STIRLING, WILLIAM G. (LAST FIRST MIDDLE)	Case Filed Mo 07 Day 27 No. of Dcts. * 05 Juvenile ☐	76 0685 02 Yr. Clerk of No. Dct.
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U.S. DISTRICT COURT	OFFENSES CHARGED	ORIGINAL COUNTS	U.S. MAG. CLERK NO.
15:77q(a)&x	Securities fraud.	1	BAIL • RELEASE ☐ AMT ☐ Fugitive ☐ Denied ☐ Est ☐ Pers. Recog. ☐ JPSA \$ 000 ☐ Date ☐ Conditions ☐ 10% Deposit ☐ Surety Bond ☐ Bail Not Made ☐ Collateral ☐ Status Changed ☐ 3rd ☐ Est. Cost ☐ Other
15:77x	False registration.	2	
18:1341	Mail fraud.	3-8	
18:371	Consp. so to do.	9	
		SUPERSEDING COUNTS	

II. KEY DATES & INTERVALS				COUNTS	(See Docket)	Priy Cust	Other
ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE			
U.S. Const. Reg. 8-12-76 Summons Served First App. Incr.	from Hk. state 7-27-76 from Hk. state Extended Indict. Info.	Trial Set For 1st Plea 8-12-76 2nd Plea	Trial Set For Trial Began 12-22-76 Trial Ended 1-29-77	Disposition of Counts: 1-29-77	3-11-77	☒ Convicted ☐ Acquitted ☐ Dismissed	☒ On All Charges ☐ On (Lesser Offenses) ☐ WOP ☐ WP

MAGISTRATE									
Search Warrant ☐ Issued ☐ Returned Summons ☐ Issued ☐ Served		DATE	INITIAL NO	INITIAL APPEARANCE DATE ▶		INITIAL/NO	OUTCOME:		
				PRELIMINARY EXAMINATION ☐ OR ☐ REMOVAL HEARING ☐			☐ Date Returned ☐ Date Held	☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW	
Arrest Warrant Issued				☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT		Tape Number			
COMPLAINT ▶									
OFFENSE (In Complaint)									

U S Attorney or Asst.

W. Cullen Mac Donald
791-0005

ATTORNEYS

Defense: ☐ CJA ☒ Flat ☐ Waived ☐ Self ☐ None / Other: ☐ PD ☐ CO

Albert J. Gaynor
202 Mamaroneck Ave
White Plains, NY
914-761-2399

- 1077

Stirling D.-1, Yanowitch-3, Schulz-4, Phillips-5.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
			(a) (b) (c)
7-27-76		Filed indictment.	
08-05-76		Pleading adjourned to 8-12-76...Goettel, J. Assigned to Frankel, J.	
8-12-76		Deft (and Atty Albert Gaynor present). Enters a plea of NOT GUILTY. Bail is set in \$5,000. Surety Bond to be posted by 4 PM today. Bail limits extended to England, Belgium, France, Scandanavian Countires & Florida, USA. Deft ordered F/P:....GOETTEL, J.	
8-12-76		Filed Deft's Appearance Bond in the amount of \$5,000.00. Name of Surety: Midlan Insurance Co. dated 8-12-76. Acknowledged by the Clerk.	
8-16-76		Filed Notice of Appearance of Atty, Albert J. Gaynor.	
8-31-76		p.t.c. held. Trial set for 12-13-76....FRANKEL, J.	
9-27-76		Fld govt's affid in opposition to lefts motins to strike paragraph 16 from the indic;	
9-27-76		Fld Govt's memorandum , The Govt respectively requests that the motions to strike paragraphs 9 & 16 be denied in all respects	
09-29-76		Filed Govt's Notice of Motion for an Order pursuant to Rule 16 of the F.R.C.P.	

(con't on Pg. 2)

(con't on Pg. 2)

PAGE 2		PAGE TWO		V EXCLUDABLE DELAY			
DATE	DOCUMENT NO.	IV PROCEEDINGS (CONTINUED)		Excluded Delay (a)	Excluded Delay (b)	Excluded Delay (c)	Total Excluded Delay (d)
29-76		Filed Govt's Memorandum of Law in Support of it's Motion for Discovery and Inspection.					
29-76		Filed Govt's Request for a Bill of Particulars.					
29-76		Filed Govt's Memorandum in Opposition to Rule 7(f) requests by the Defts.					
-76		Fld stip & order ,the Govt shall afford discovery of all polygraph materials, its index to the numbered discovery materials & shall cause a search to be made for any index which was maintained by Sterling Homex Corp etc ... So ordered FRANKEL, J.					
1-03-76		Filed Govt. Affidavit and its attachment in accordance with pre-trial order entered.					
11/5/76		Filed Gov't Affidavit in response to Albert J. Gaynor's letter dated 11/3/76.					
12-13-76		Filed Govt's Motion for Discovery, dated 12-5-76					
12-13-76		Filed Govt's Motion for Discovery, dated 10-1-76					
12-13-76		Filed Govt's Motion for Discovery, dated 10-12-76					
12-13-76		Filed Govt's Motion for Discovery, dated 10-12-76					
12-17-76		Fld Govt's Answer to Motion For Barrng of Witnesses Giovino and Levering.					
1-4-77		Filed ONE BROWN ENVELOPE to be sealed and impounded. So ordered FRANKEL, J.					
1-4-77		Filed ONE BROWN ENVELOPE to be sealed and impounded. So ordered FRANKEL, J.					
12-22-76		Jury Trial begins, atty pres.					
12-23-76		Trial Cont'd					
12-27-76		" "					
12-28-76		" "					
12-29-76		" "					
12-30-76		" "					
1-3-77		" "					
1-4-77		" "					
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1-20-77		" "					
1-21-77		" "					
1-22-77		" "					

cont'd on page 3

RECEIPT NUMBER	DATE	RECEIPT NUMBER	DATE

Docket Continuation

PROCEEDINGS	Date Order or Judgment Note
Trial Cont'd	
" "	
" "	
" "	
" & concluded. Jury returns a verdict of GUILTY on each of counts 1 thru 9 P.S.I. ordered. Sentence set for 3-11-77. Bail cont'd in addition \$20,000. P.R.B. signed by another person, plus debt is set and to be posted within one week pursuant to be surrendered until conditions are met. So ordered.....FRANKEL, J.	
Filed APPEARANCE BOND for \$20,000.00 with co-signed. dated 1-31-77.	
Filed debts affidavit & notice of motion for a Judgment of Acquittal. Ret. at a date set by the Court,	
Filed transcript of record of proceedings, dated 12-22, 23, 27 & 28 - 76	
Filed transcript of record of proceedings, dated 12-29 & 30 - 76 8 1-3-77	
Filed transcript of record of proceedings, dated 1- 4, 5 & 6 - 77	
Filed transcript of record of proceedings, dated 1- 7, 10 & 11 - 77	
Filed transcript of record of proceedings, dated 1- 12, 13, 14 & 15 - 77	
Filed transcript of record of proceedings, dated 1- 20, 21 & 22 - 77	
Filed transcript of record of proceedings, dated 1- 24, 25 & 26 - 77	
Filed transcript of record of proceedings, dated 1- 17, 18 & 19 - 77	
Filed transcript of record of proceedings, dated 1- 1-77	
Filed JUDGMENT (77,350) and Probation/Commitment Order - The debt is hereby committed to the custody of the Atty Gen for impr for a period of SIX (6) MONTHS on each of counts 1 thru 8 to run concurrently with each other. Fined \$5,000 on each on counts 1 thru 8 to run concurrently with each other. Fine is a committed fine and is to be paid during period of probation with arrangements made by probation office. Imposition of prison sentence as to count 9 is suspended. Debt. placed on unsupervised probation for a period of ONE (1) YEAR to commence upon release from confinement. Debt. cont'd on present bail pending appeal. So ordered FRANKEL, J. All copies issued.	
Filed NOTICE OF MOTION for an order pursuant to Rule 7(b) releasing the transcripts of proceedings herein to the firm of Hawkins, Delafield & Wood, etc. RET: 3-21-77.	
Filed DEFT'S NOTICE OF APPEAL to the USCA from the Judgment of the Court entered on the 3-11-77. Mailed Notices to US, ATTY and Counsel for the Deft.	
Filed MEMORANDUM concerning copies and prices of transcript. So ordered FRANKEL, J. m/n	
Filed MEMO-ENDORSED on deft's motion filed 3-16-77. Motion withdrawn. So ordered, Frankel, J. m/n	
Filed AFFIDAVIT of Angus Macbeth in opposition of deft's motion to make a photostatic copy of the transcript of this trial.	
Filed transcript of record of proceedings, dated 3-14-77	
Filed Motion for Judgment of Acquittal filed 2-1-77 for judgment of acquittal. "Motion denied. So ordered." Frankel, J.	

STY OFFENSE PD	HEAR Misd THATE Assign	U.S.	Case Filed	0685	03
STY OFFENSE MO	0845	vs	Day		
STY COMPLAINT Misd	0208	1	07/27	76	08
FELONY Fel	0208	1	No. of Days	05	
			vs		
			Disch. in		
			Det.		

U.S. DISTRICT COURT	OFFENSES CHARGED	ORIGINAL COUNTS	U.S. MAG. CASE NO.
15:77(q)a6x	Securities fraud.	1	BAIL • RELEASE ☐ AMT ☐ Fugitive ☐ Denied ☐ Set ☐ Pers. Recog. ☐ PSA \$ 000 conditions ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ Bail Not Made ☐ 3rd ☐ Other ☐ Status Changed (See Docket)
15:77x	False registration.	2	
18:1341	Mail fraud.	3-8	
18:371	Consp. so to do.	9	
II. KEY DATES & INTERVALS		SUPERSEDING COUNTS	
ARREST OF	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custom # 8-5-76	Information 7-27-76	08-05-76	08-05-76
Summons Served	Indict. Waived	08-05-76	12-22-76
First Appearance	In Charging	Final Pleadings	Final Disposition 1-29-77

MAGISTRATE						
Search Warrant	Issued	DATE	INITIAL NO.	INITIAL APPEARANCE DATE ▶	INITIAL NO.	OUTCOME:
	Return			PRELIMINARY EXAMINATION		Date Scheduled ▶
Summons	Issued			REMOVAL HEARING	Date Held ▶	☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
	Served				☐ WAIVED ☐ NOT WAIVED	
Arrest Warrant Issued				DEFENDING INDICIMENT		
COMPLAINT ▶						
OFFENSE (in Complaint)						

U.S. ALLIANCE OF ASMs

W. Cullen Mac Donald
791-0005

ATTORNEYS Defense ☒ CIA ☒ FBI ☐ Navy ☐ Self ☐ None / Other ☐ PO ☐ CD

Sidney Feldshuh

~~144 East 41th Street~~
New York City, ~~NY 10017~~
~~212-668-8030~~

* Show tag names and all attributes of the selected elements in the HTML editor.

(Stirling, D.-1, Stirling, W.-2, Schlz-4, Phillips-5.

Stirling, D.-1, Stirling, W.-2, Schlz-4, Phillips-5.		EXCLUDABLE DELAY	
DATE	DOCUMENT NO.	PROCEEDINGS	(a) (b) (c) (d)
7-27-76		Filed indictment.	
08-05-76		Deft. (Atty. present) enters a not guilty plea 10 days for motions. Bail: Post deed to his home and has till next Wednesday to post deed. Bail enlarged to include Mass. and notify Attys. office trip by trip. Deft. ordered (10-5 days trial). Assigned to Frankel, J. Goettel, J.	
8-9-76		Filed Notice of Appearance of Atty, Sidney Feldshuh.	
8-31-76		P.T.C. held. Trial set for 12-13-76....FRANKEL, J.	
9-8-76		Filed Deft's Demand for Bill of Particulars.	
9-8-76		Filed Deft's affdvt & Notice of Motion for an order striking paragraphs 9 and 16 from the Indictment, as so indicated.	
9-8-76		Filed Deft's Memorandum of Law in support of the above motion filed same date.	
9-27-76		Fld govt's affid in opposition to deft's motions to strike : paragraph 16 from the indict	
9-27-76		Fld govt's memorandum ,The govt respectfully requests that the motions to strike paragraphs 9 & 16 be denied in all respects (con't on pg. 2)	

DATE	PAGE 2	IV PROCEEDINGS (continued)	PAGE TWO	V EXCLUDABLE DELAY			
				Time (a)	Time (b)	Time (c)	Total (d)
09-29-76	Filed Govt's Notice of Motion for an Order pursuant to Rule 16 of the F.R.C.P..						
09-29-76	Filed Govt's Memorandum of Law in Support of it's Motion for Discovery and Inspection.						
09-29-76	Filed Govt's Request for a Bill of Particulars.						
09-29-76	Filed Govt's Memorandum in Opposition to the Rule 7(f) requests by the Defts.						
10-1-76	Filed MEMO ENDORSEMENT on Deft's affdvt & Notice of motion to strike Para.#9 & 16 from the Indictment filed 9-8-76. Motion DENIED.*Except as Par.16 is modified by substituting words at argument. So Ordered....FRANKEL, J. (M/N 10-6-76.						
11-03-76	Filed Govt. Affidavit and its attachment in accordance with pre-trial order entered.						
11/5/76	Filed Gov't Affidavit in response to Albert J. Gaynor's letter dated 11/3/76.						
11-19-76	Filed Deft's Notice of Motion to Quash Subpoena. RET: 11-26-76.						
12-13-76	Filed 8-5-76						
12-13-76	Filed 10-1-76						
12-13-76	Filed 10-12-76						
12-17-76	Filed Gov'ts Answer to Motion for Barring of witnesses Giovino and Levering.						
12-23-76	Filed ORDER TO SHOW CAUSE why an order should not be made pursuant to Rule 17 (c) quashing the subpoena issued to Sec. Trust Corp. etc. RET: 12-27-76 @ 9:30 AM in room 1106. So orderedFRANKEL, J.						
1-4-77	Filed ONE LARGE BROWN ENVELOPE to be sealed and impounded so ordered Frankel, J.						
1-4-77	Filed ONE LARGE BROWN ENVELOPE TO be sealed and impounded So ordered Frankel, J.						
12-22-76	Jury trial begins atty pres.						
12-23-76	Trial Cont'd						
12-27-76	"						
12-28-76	"						
12-29-76	"						
12-30-76	"						
1-3-77	"						
1-4-77	"						
1-5-77	"						
1-6-77	"						
1-7-77	"						
1-10-77	"						
1-11-77	"						
1-12-77	"						

Cont'd on Page 3

DATE	RECEIPT NUMBER	DATE	RECEIPT NUMBER	DATE	RECEIPT NUMBER

116 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order of Judgment Note
13-77	Trial cont'd.	
14-77	" "	
15-77	" "	
17-77	" "	
18-77	" "	
19-77	" "	
20-77	" "	
21-77	" "	
22-77	" "	
24-77	" "	
25-77	" "	
25-77	" "	
27-77	" "	
28-77	" "	
29-77	" " & concluded. Jury returns a verdict of GUILTY on each of counts 1 thru 9. P.S.I. ordered. Sentence set for 3-11-77. Bail cont'd.	
1-77	Filed transcript of record of proceedings, dated 12-22, 23, 27 & 28 - 76	
1-77	Filed transcript of record of proceedings, dated 12-29 & 30 - 76 & 1 - 3 - 77	
1-77	Filed transcript of record of proceedings, dated 1 - 4, 5 & 6 - 77	
1-77	Filed transcript of record of proceedings, dated 1 - 7, 10 & 11 - 77	
1-77	Filed transcript of record of proceedings, dated 1 - 12, 13, 14 & 15 - 77	
1-77	Filed transcript of record of proceedings, dated 1 - 20, 21 & 22 - 77	
1-77	Filed transcript of record of proceedings, dated 1 - 24, 25 & 26 - 77	
1-77	Filed transcript of record of proceedings, dated 1 - 17, 18 & 19 - 77	
1-77	Filed transcript of record of proceedings, dated 11-24-74	
1-77	Filed transcript of record of proceedings, dated 11-8-74	
1-77	Filed JUDGMENT (72377) AND PROBATION/COMMITMENT ORDER - The deft is hereby committed to the custody of the Atty Gen for impr for a period of ONE (1) YEAR on each of counts 1 thru 8 to run concurrently with each other. Fined \$2,000. on each other. Fine is a committed fine and is to be paid during period of probation with arrangements made by probation office. Imposition of prison sentence as to count 9 is suspended. Deft. placed on probation for a period of ONE (1) YEAR, to commence upon release from confinement, and subject to the standing probation order of the court. Deft ordered to submit to psychiatric examination in the next 60 days by a physician and if possible, to be agreed upon between deft counsel and the Gov't, at the expense of the Gov't for such later consideration as may be needed by the court of others involved with the deft's sentence to a term of imprisonment. Deft cont'd on present bail pending appeal. So ordered FRANKEL, J. All copies issued.	
1-77	Filed NOTICE OF APPEAL to the USCA from the Judgment of 3-II-77 by the deft. Mailed Notices to US ATTY And Counsel of the deft.	
1-77	Filed MEMORANDUM concerning copies and proces of transcripts. So ordered FRANKEL, J. m/n.	
2-11-77	Filed transcript of record of proceedings, dated 3-14-77	
1-77	Filed document in opposition to motion to quash.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

- v - :

INDICTMENT

DAVID STIRLING, JR., : 76 Cr. 685 (MEF)
WILLIAM G. STIRLING, :
HAROLD M. YANOWITCH, :
EDWIN J. SCHULZ, and :
RUBEL L. PHILLIPS, :

Defendants. :
-----x

COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all relevant times, the Stirling Homex Corporation ("Homex") was incorporated under the laws of the State of Delaware and maintained offices in the Southern District of New York and elsewhere. Homex was principally engaged in the business of manufacturing and installing factory-built modular housing.

2. On or about February 19, 1970, Homex registered 1,175,000 shares of its common stock for sale with the Securities and Exchange Commission ("SEC"), an agency of the United States, and sold that stock to members of the public for approximately \$19,000,000; on or about July 29, 1971, Homex registered 500,000 shares of its preferred stock for sale with the SEC and sold that stock to members of the public for approximately \$20,000,000; thereafter there existed in New York, New York, and elsewhere, a public over-the-counter market for Homex common and preferred stock. Less than a year later, on July 12, 1972, Homex was bankrupt.

3. At all relevant times, defendant DAVID STIRLING, JR., was the chief executive officer of Homex, chairman of its board of directors and the owner of a controlling block

of approximately 2,000,000 shares of Homex common stock. On February 19, 1970, he sold 110,100 shares of his Homex common stock for approximately \$1,600,000.

4. At all relevant times, defendant WILLIAM G. STIRLING was the president of Homex, a member of its board of directors and the owner of a controlling block of approximately 2,000,000 shares of Homex common stock. On February 19, 1970, he sold 112,000 shares of his Homex common stock for approximately \$1,700,000.

5. Beginning in or about 1968 and at all relevant times thereafter, defendant EDWIN J. SCHULZ was an employee of Homex, its chief accounting officer and the owner of 3,200 shares of Homex common stock.

6. Beginning in or about 1969, and at all relevant times thereafter, defendant HAROLD M. YANOWITCH, an attorney, was an employee of Homex, a member of its board of directors, its chief legal officer and the owner of approximately 160,000 shares of Homex common stock.

7. Beginning in or about 1971, and at all relevant times thereafter, defendant RUBEL L. PHILLIPS, an attorney, was an employee of Homex with an office in Jackson, Mississippi and the owner of an option to purchase 40,000 shares of Homex common stock.

I. FRAUD SCHEME

8. From on or about the 1st day of January, 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury known and unknown, did employ a device, scheme, and artifice to

defraud Homex's shareholders, officers, directors and others including its auditors, in connection with the offer and sale of securities, to wit, common and preferred stock of Stirling Homex Corporation.

II. THE OBJECT OF THE SCHEME

9. It was the object of said scheme deliberately to deceive members of the public investing in Homex securities by fraudulently inflating reported earnings and simultaneously ~~falsifying and concealing materially adverse information~~ required to have been fairly and truly disclosed.

III. THE MEANS BY WHICH THE FRAUD SCHEME WAS CARRIED OUT

10. It was a part of said scheme to defraud that in 1969, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITZ and EDWIN J. SCHULZ falsely inflated revenues and profits by arranging two "sales" of land at artificially high prices that were induced by and based upon side promises and guarantees given to the buyers. In connection therewith, the defendants signed and filed registration statements with the SEC which fraudulently concealed the following essential facts, among others, about these "sales" which accounted for 1st of net income for the fiscal year ending July 31, 1969: (a) both "sales" involved side promises and agreements given to the buyers including limitations on and guarantees against losses; (b) both "sales" required only minimal down payments with the remainder of the purchase payment being largely postponed for several years; and (c) both "sales" were to financially weak shell corporations without sufficient means to meet the payment obligations.

11. It was further a part of said scheme to defraud that during 1970 and 1971 the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, and EDWIN J. SCHULZ, would prepare, file with the SEC, and distribute to shareholders annual and interim reports which fraudulently omitted to disclose, among other things: (a) that such "sales" were not being consummated; (b) that in one instance, persons affiliated with or controlled by Homex were substituted as owners of the shell corporation and were secretly guaranteed against losses and indirectly provided with Homex funds to make periodic payments toward the unpaid purchase obligation; and (c) that the payment obligations arising from these "sales" were in fact uncollectible.

12. It was further a part of said scheme to defraud that in 1971 the defendant, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, and EDWIN J. SCHULZ falsely inflated revenues and profits by arranging a third "sale" of land at an artificially high price that was induced by and based upon secret promises and guarantees given to the buyers. In connection therewith, the defendants prepared and filed registration statements and quarterly reports with the SEC which fraudulent concealed the following essential facts, among others, about this "sale" which accounted for nearly half of Homex's earnings for the first half of the fiscal year ending July 31, 1971: (a) that such "sale" involved side promises and agreements given to the buyers including guarantees against losses; (b) that such "sale" involved only a minimal downpayment, borrowed through the use of Homex collateral, with the remainder of the purchase payment being postponed several years; (c) that such "sale" was at a price which had been artificially raised; and (d) that such "sale" was to a financially weak

shell corporation, without sufficient means to meet the payment obligations, and which was owned by individuals associated with a business which, in turn, had derived a material portion of its past revenues from dealings with Homex.

13. It was further a part of said scheme to defraud that in or about July 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH and EDWIN J. SCHULZ prepared, signed and filed with the SEC registration statements and other written representations which falsely and fraudulently stated that Homex recognized income from sales of modules when manufactured modules were assigned to specific contracts. That representation was false because, as the defendants well knew, such assignments had been repeatedly cancelled or reversed with the modules then being reassigned from project to project until, for example, by February 28, 1971, a total of approximately \$13,500,000 of such sales had been written on and off and back onto Homex's books of account. This history of mass reassignments was deliberately withheld from both Homex's auditors and the SEC.

14. It was further a part of said scheme to defraud that during 1971 defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULTZ, and RUBEL L. PHILLIPS fraudulently and falsely inflated Homex's sales and earnings by arranging for a purported arms-length "sale" of modules for \$15,000,000 which was induced by and based upon a forged commitment letter and by secret side promises and agreements given to the buyers. In connection therewith, the defendants prepared and filed registration statements and other reports with the SEC which fraudulently concealed the following essential facts, among others, about

this "sale" which accounted for more than half of Homex's earnings for the nine-months ended April 30, 1971, and all of its earnings for the six months ended January 31, 1971: (1) that such "sale" was based upon a back dated contract not entered into until on or about February 24, 1971, well after the relevant accounting period had ended; (b) that, while said "sales" contract was expressly conditioned on Homex's manufacturing the modules in Mississippi and Homex's obtaining federal funding, in point of fact, Homex had not satisfied either condition; (c) that the purchaser was a financially weak shell corporation, without sufficient means to meet the payment obligations, which Homex had caused to be formed in the first place; and (d) that, during March, 1971, the defendant HAROLD M. YANOWITCH, had employed the forged commitment letter to defraud Homex's auditors into certifying its financial statements.

15. It was further a part of said scheme to defraud that defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ, and RUBEL L. PHILLIPS fraudulently and falsely inflated and overstated Homex's publicly reported assets, revenues and earnings while also fraudulently understating its liabilities, reserves and expenses. In connection therewith, the defendants deliberately falsified and concealed from Homex's auditors material information as to adjustments in its accounts including those relating to: (a) installation division revenues and costs for the period ending July 31, 1970; (b) U.S. Shelter revenues for the period ending February 28, 1971; and (c) deferred, general and administrative expenses for the period ending February 28, 1971.

16. It was further a part of said scheme to defraud that on or about July 29, 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, and HAROLD M. YANOWITCH prepared and filed with the SEC registration statements and other reports which described Homex's several relations with the United Brotherhood of Carpenters and Joiners of America and its locals. Those statements were materially false and misleading, because as the defendants well knew, but failed to disclose, seven members and officials of the United Brotherhood of Carpenters and Joiners of America had had approximately \$240,000 worth of Homex common stock purchased for them at approximately \$76,800 less than the fair market value, and afterwards, when the fair market price had fallen, approximately \$64,000 worth of Homex common stock sold for them at approximately \$136,000 above the market price.

IV. STATUTORY ALLEGATIONS

17. From on or about the 1st day of January 1968, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ, and RUBEL L. PHILLIPS, and others to the Grand Jury known and unknown, unlawfully, willfully and knowingly, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, to wit, the common and preferred stock of Stirling Homex Corporation: (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make

the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of Stirling Homex Corporation securities.

(Title 15, United States Code, Sections 77q(a) and 77x and Title 18, United States Code, Section 2.).

COUNT TWO

The Grand Jury further charges:

1. On or about July 29, 1971, in the Southern District of New York, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, unlawfully, wilfully and knowingly made and caused to be made untrue statements of material facts in a registration statement and omitted to state material facts required to be stated therein and necessary in order to make the statements therein not misleading.

2. Said registration statement as amended covered 500,000 shares of Homex preferred stock and was required to be filed and was filed with the SEC pursuant to Title 15, United States Code, Sections 77e through 77h and 17 C.F.R. §§ 230.400 to 230.499 and 239.11 promulgated by the SEC thereunder.

3. Each of the allegations in Count One of this Indictment is incorporated and realleged in this Count as if fully set forth herein.

(Title 15, United States Code, Section 77x and Title 18, United States Code, Section 2.).

COUNTS THREE THROUGH EIGHT

The Grand Jury further charges:

1. From on or about January 1, 1968, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J.

SCHULZ, and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud the purchasers of Stirling Homex Corporation securities and other persons, and to obtain money and property by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, did take and receive therefrom, and did cause to be delivered by mail according to the directions thereon certain mail matter to be sent and delivered by the Postal Service as hereinafter set forth.

2. Each of the allegations contained in Count One of this indictment is repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offenses charged in Counts Three through Eight of this Indictment.

3. On or about the dates hereinafter set forth in Counts Three through Eight of this Indictment, in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did place and caused to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail according to the directions thereon, the matter hereinafter set forth:

<u>Count</u>	<u>Date</u>	<u>Matter</u>	<u>Addressee</u>
3	8/2/71	Prospectus	Peter R. Cottrell & Mary Lee Cottrell, JT TEN 115 Clinton Street Mount Vernon, N.Y. 10552
4	8/2/71	Prospectus	Ronald J. Benice & Doris P. Benice 25 Stewart Place Mt. Eisco, N.Y.

<u>Count</u>	<u>Date</u>	<u>Matter</u>	<u>Addressee</u>
5	10/8/71	1971 Annual Report	Joseph Szymanski 200 West 18th St. New York, New York
6	10/8/71	1971 Annual Report	Peter R. Cottrell & Mary Lee Cottrell, JT TEN 115 Clinton Street Mount Vernon, N.Y. 10552
7	12/6/71	Quarterly Report to Shareholders	Joseph Szymanski 200 West 18th Street New York, N.Y.
8	12/6/71	Quarterly Report to Shareholders	Nobumitsu Fukui 53 Greene Street New York, N.Y. 10013

(Title 18, United States Code, Sections 1341 and 2.)

COUNT NINE

The Grand Jury further charges:

1. From on or about the first day of January 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury both known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States and the SEC and to violate Sections 1001 and 1341 of Title 18 and Sections 77c (a), 77x, and 78ff of Title 15, United States Code.

2. It was a part of said conspiracy that the defendants unlawfully, knowingly and wilfully, in matters within the jurisdiction of departments and agencies of the United States, would and did falsify, conceal and cover up by trick, scheme and device material facts, and make false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries in violation of Section 1001 of Title 18, United States Code.

3. It was a further part of said conspiracy that the defendants unlawfully, wilfully and knowingly, would and did devise and intend to devise a scheme and artifice to defraud the purchasers of Stirling Homex Corporation securities and other persons, and to obtain money and property by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, would and did place and cause to be placed in post offices and authorized depositories for mail matter, take and receive therefrom, and cause to be delivered by mail according to the directions thereon certain mail matter to be sent and delivered by the Postal Service in violation of Section 1341 of Title 18, United States Code.

4. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly, by use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, to wit, the common and preferred stock of Stirling Homex Corporation: (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of Stirling Homex Corporation securities in violation of Section 77q(a) of Title 15, United States Code.

5. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly would and did make untrue statements of material facts in registration statements required to be filed with the SEC and omitted to state material facts required to be stated therein and necessary in order to make the statements therein not misleading in violation of Section 77x of Title 15, United States Code.

6. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly would and did make false and misleading statements with respect to material facts in annual and quarterly reports required to be filed with the SEC in violation of Section 78ff of Title 15, United States Code.

OVERT ACTS

7. Each of the allegations contained in Count One of this Indictment is repeated and realleged as though fully set forth herein as constituting and describing some of the overt acts by which the defendants committed the offense charged in Count Nine of this indictment. In addition, in furtherance of the said conspiracy and to effect the objects thereof, the defendants did commit the following additional overt acts, among others, in the Southern District of New York and elsewhere:

(1) On or about August 5, 1971, defendant HAROLD M. YANOWITCH attended a closing in New York, New York where the \$19,000,000 from the sale of the preferred stock was paid.

(2) On or about December 6, 1971, DAVID STIRLING, JR., and WILLIAM G. STIRLING signed and caused to be delivered in the Southern District of New York a quarterly report to shareholders.

(Title 18, United States Code, Section 371.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

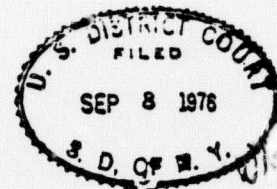
v.

DAVID STIRLING, JR.,
WILLIAM G. STIRLING,
HAROLD M. YANOWITCH,
EDWIN J. SCHULZ, and
RUBEL L. PHILLIPS,

Defendants.
-----X

NOTICE OF MOTION

76 Cr. 685 (M.E.F.)



S I R S :

PLEASE TAKE NOTICE that upon the indictment herein, the affidavit of Sidney Feldshuh, sworn to on September 7, 1976, and the accompanying memorandum of law, the undersigned will move this Court on the 13th day of September, 1976, for an order, pursuant to Rule 7(d) of the F.R. Cr. P., striking paragraphs 9 and 16 of said indictment on the ground that paragraphs 9 and 16 are surplusage and are not necessary ingredients of the offense charged in said allegations, are prejudicial and inflammatory, and for such other and further relief as may be proper in the circumstances.

Dated: New York, N. Y.
September 7, 1976

Yours, etc.

Sidney Feldshuh
Sidney Feldshuh
Attorney for Defendant
Harold M. Yanowitch
Office and P.O. Address
919 Third Avenue
New York, N.Y. 10022
212-752-8231

TO:

Hon. Robert B. Fiske, Jr.
United States Attorney
Southern District
of New York
Foley Square, N.Y. 10007
Atten: Cullen MacDonald, Esc.

Albert J. Gaynor
Albert J. Gaynor
Attorney for Defendants
David Stirling, Jr. and
William G. Stirling
Office & P.O. Address
202 Mamaroneck Avenue
White Plains, N.Y. 10601
914-761-2399

Clerk, United States District Court
Southern District of New York
United States Courthouse
Foley Square, New York, N.Y. 10007

13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :
 : AFFIDAVIT
Plaintiff, :
v. : 76 Cr. 685 (M.E.F.)
DAVID STIRLING, JR., :
WILLIAM G. STIRLING, :
HAROLD M. YANOWITCH, :
EDWIN J. SCHULZ, and :
RUBEL L. PHILLIPS, :
 :
Defendants. :
-----x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

SIDNEY FELDSHUH, being duly sworn, deposes and says:

1. I am the attorney for Harold M. Yanowitch, one of the above-named defendants, and Albert J. Gaynor is the attorney for the defendants David Stirling, Jr. and William G. Stirling.
2. This motion is jointly made on behalf of defendants Yanowitch and the Stirlings.
3. This joint motion seeks to strike paragraphs of the indictment herein (a copy of which is annexed hereto).
4. This motion is directed, respectively, at paragraphs 9 and 16 on the ground that they constitute surplusage which, as to paragraph 9, is repetitive and, as to both paragraphs 9 and 16, are unnecessary, prejudicial and inflammatory.
5. In substance, the indictment charges violations of Sections 17 and 24 of the Securities Act of 1933 (the 1933 Act) (Title 15 U.S.C. §§77q(a) and 77x) and Section 32 of the

Securities Exchange Act of 1934 (the 1934 Act) (Title 15 U.S.C. 78ff). Peripherally to this area, the indictment further charges a conspiracy to commit such violations (Title 18 U.S.C. § 371) and commission of mail fraud (Title 18 U.S.C. § 1341).

6. Hence, the center point of this indictment is the classic charge of securities fraud with respect to the making of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. So, too, Section 24 of the 1933 Act and Section 32 of the 1934 Act expand the umbrella of this charge to include such misstatements or omissions in a registration statement.

AS TO PARAGRAPH 9 OF THE INDICTMENT

7. After the introductory material set out under Count One in paragraphs 1 through 7, paragraph 8 reads as follows:

"8. From on or about the 1st day of January, 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury known and unknown, did employ a device, scheme, and artifice to defraud Homex's shareholders, officers, directors and others including its auditors, in connection with the offer and sale of securities, to wit, common and preferred stock of Stirling Homex Corporation."

8. Thus, paragraph 8 lays out the purpose and object of the alleged fraudulent scheme, i.e.,

"to defraud Homex's shareholders, officers and directors and others including its auditors, in connection with the offer and sale of securities, to wit, common and preferred stock of Stirling Homex Corporation."

9. Paragraph 9 of the Indictment is labeled "II. THE OBJECT OF THE SCHEME. It reads as follows:

"9. It was the object of said scheme deliberately to deceive members of the public investing in Homex securities by fraudulently inflating reported earnings and simultaneously falsifying and concealing materially adverse information required to have been fairly and truly disclosed."

10. A fair reading of paragraph 8 in relation to paragraph 9 makes plain that paragraph 9 merely repeats the object of the fraudulent scheme as quoted above. It adds nothing to the substance of paragraph 8 other than by repetitive emphasis inflates prejudice and creates an inflammatory epithetical description to the fraudulent scheme set out in paragraph 8.

11. Paragraph 9 serves no purpose other than to label with opprobrious language that which has already been said in paragraph 8.

12. Certainly, the indictment is sufficient and adequate as alleging charges under the Securities Acts.

13. In sum, paragraph 9, adding nothing to the indictment except prejudicial and inflammatory language, must, and should be, stricken as this is truly the kind of surplusage to which F.R.Cr.P. §7(d) is directed.

AS TO PARAGRAPH 16 OF THE INDICTMENT

14. Paragraphs 10 through 16 allege "THE MEANS BY WHICH THE FRAUD SCHEME WAS CARRIED OUT" (Indictment, p. 3). Paragraph 16 is as follows:

"16. It was further a part of said scheme to defraud that on or about July 29, 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, and HAROLD M. YANOWITZ prepared and filed with the SEC registration statements and other reports which described

Homex's several relations with the United Brotherhood of Carpenters and Joiners of America and its locals. Those statements were materially false and misleading, because as the defendants well knew, but failed to disclose, seven members and officials of the United Brotherhood of Carpenters and Joiners of America had been paid off by having approximately \$240,000 worth of Homex common stock purchased for them at approximately \$76,800 less than the fair market value, and afterwards, when the fair market price had fallen, approximately \$64,000 worth of Homex common stock sold for them at approximately \$136,000 above the market price."

15. Heretofore, and on about December 11, 1974, Messrs. Yanowitch and Stirling were indicted in the United States District Court for the Western District of New York for alleged violations of the Labor Management Act in that it was claimed that members and officials of the United Brotherhood of Carpenters and Joiners of America had purchased shares of Homex common stock in February and March of 1970 with the aid and assistance of Messrs. Stirling and Yanowitch, and that such aid and assistance constituted misdemeanors under the aforesaid Labor Management Act. Although upon initial pleading, a plea of not guilty was duly entered on behalf of both defendants, thereafter such pleas were withdrawn and, as to Yanowitch, a plea of nolo contendere was entered, and, as to David Stirling, Jr., a plea of guilty as to Counts Seventeen, Nineteen and Twenty was accepted to cover the entire indictment. In due course, and upon sentence, Mr. Yanowitch was fined \$1,000 and Mr. Stirling \$3,000, which fines were duly paid.

16. To consider the impact of paragraph 16 of the indictment, we must look to the text of the registration statement to which this paragraph refers.

17. We find that on page 9 of the definitive prospectus, there is a section with the heading "Labor Relations." However, a reading of this section makes plain that the asserted violations of the Labor Management Act are not material to the matters set out in this section.

18. This section is as follows:

"Labor Relations

The Company employs about 1,000 people exclusive of site labor, of whom about 365 are executive, administrative or clerical with the balance engaged in production. In September 1968 the production employees were organized in an industrial unit by the United Brotherhood of Carpenters and Joiners of America, the largest of the building trades unions, representing approximately 30% of all building trades union employees. The Company thereafter entered into a collective bargaining agreement, expiring in September 1971, with the local union providing an industrial contract covering all production employees.

"In June 1969 the Company entered into an international agreement with the national office of the United Brotherhood of Carpenters and Joiners of America. Under this contract the Union has agreed to furnish competent journeymen on a non-discriminatory basis to install Company modules anywhere within the jurisdiction of the Union. In return, the Company has agreed to recognize the jurisdictional claims of the Union and not to subcontract any work within the Union's jurisdiction which is to be performed at the job site except to a contractor who is a party to an agreement with the Union or who agrees in writing to be bound by the terms of the aforementioned agreement. As a result, the modules are manufactured and dwellings are installed completely by building trades union labor. The Company has had no strikes or interferences with its production or on-site erection of its dwelling units.

"Freedom from work interruptions as a result of labor problems is important to the continued success of the Company's business. The Company believes that the above-mentioned agreements have contributed to its present satisfactory labor relations, but it can give no assurance that it will be free of labor problems in the future.

"The Company and the Union have agreed to cooperate in a program to provide free training and job opportunities to unemployed unskilled labor and have established an educational program at the Company's Avon plants. The United States Department of Labor and the New York State Department of Labor have awarded the Company manpower grants to assist in the training, in cooperation with the Union, of unemployed unskilled workers in the

Rochester area. The Company also offers a continuing education program to all of its employees, with over 90 courses ranging from the skills required on the assembly-line to computer simulation exercises for management."

19. There is no relationship between the matters set out in the prospectus and the manner in which those statements became materially false because of the claimed non-disclosure that the defendants Stirling and Yanowitch aided and assisted Union officials in their purchase of Homex stock. Indeed, the caution that no assurance could be given that the Company will be free of labor problems in the future makes plain the conservative attitude of the Company with regard to matters set out in this section. It must be emphasized that the events referred to in the first two paragraphs of the quoted section occurred long before February 19, 1970, which was the date when Homex became a public company for the first time and issued its common stock. It is utterly farfetched to see how the latter two paragraphs of the quoted section are made materially misleading by the above-referred-to alleged transactions between Messrs. Stirling and Yanowitch and Union officials. Certainly, freedom from work interruptions arising out of labor problems is important to the success of the Company. Likewise, the agreements which were effected in 1969 did contribute to satisfactory labor relationships. So, too, the fact that the Company offered a program of free training and job opportunities to unskilled labor is not made materially false or misleading. Equally so, the establishment of educational programs for unskilled workers in the Rochester area under the aegis of the United States Department of Labor and the New York State Department of Labor is not made materially false by the aforementioned non-disclosure.

20. On the other hand, the references to the prior indictment are not only irrelevant but, to the contrary, a reading of paragraph 16 can inflame and prejudice the jury when in truth and in fact, the referred-to events, being misdemeanors under the Labor Management Act, in no way diminish the impact and viability of the indictment. This paragraph is totally unnecessary to sustain the indictment.

21. It is submitted that the inclusion of paragraph 16 was but a back-door way of bringing before the jury a totally unconnected event by trying to relate it to Securities Acts' violations.

22. The prejudice arising from this attempt far outweighs its probative value with respect to the events charged. These claimed misdemeanors were duly brought to the attention of a proper tribunal and that tribunal acted. Although we do not claim double jeopardy, nevertheless, we respectfully submit that this Court must guard against the insertion in the indictment, which can be read to the jury, of events long since punished.

23. If paragraph 16 seeks to establish the existence of a conspiracy, it is a conspiracy worlds apart from the conspiracy to which this indictment is addressed. It is hornbook law that two separate and distinct conspiracies should not be charged in the same indictment.

24. The mischief done by the insertion of this is that it paragraph 16 places an extraordinary burden upon the defendants in a situation where those allegations are not needed by the prosecution to establish its case.

25. Based upon all of the foregoing reasons,
it is respectfully requested that paragraphs 9 and 16 be
stricken from the indictment pursuant to Rule 7(d).

Stephen Garber

Sworn to before me this
7th day of September, 1976.

Stephen Garber

STEPHAN GARBER
Notary Public, State of New York
No. 41-1526115
Qualified in Queens County, 1976
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v -

DAVID STIRLING, JR.,
WILLIAM G. STIRLING,
HAROLD M. YANOWITZ,
EDWIN J. SCHULZ, and
RUBEL L. PHILLIPS,

Defendants.

:
: INDICTMENT

: 76 Cr.
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:

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COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all relevant times, the Stirling Homex Corporation ("Homex") was incorporated under the laws of the State of Delaware and maintained offices in the Southern District of New York and elsewhere. Homex was principally engaged in the business of manufacturing and installing factory-built modular housing.

2. On or about February 19, 1970, Homex registered 1,175,000 shares of its common stock for sale with the Securities and Exchange Commission ("SEC"), an agency of the United States, and sold that stock to members of the public for approximately \$19,000,000; on or about July 29, 1971, Homex registered 500,000 shares of its preferred stock for sale with the SEC and sold that stock to members of the public for approximately \$20,000,000; thereafter there existed in New York, New York, and elsewhere, a public over-the-counter market for Homex common and preferred stock. Less than a year later, on July 12, 1972, Homex was bankrupt.

3. At all relevant times, defendant DAVID STIRLING, JR., was the chief executive officer of Homex, chairman of its board of directors and the owner of a controlling block

of approximately 2,000,000 shares of Homex common stock. On February 19, 1970, he sold 110,100 shares of his Homex common stock for approximately \$1,600,000.

4. At all relevant times, defendant WILLIAM G. STIRLING was the president of Homex, a member of its board of directors and the owner of a controlling block of approximately 2,000,000 shares of Homex common stock. On February 19, 1970, he sold 112,000 shares of his Homex common stock for approximately \$1,700,000.

5. Beginning in or about 1968 and at all relevant times thereafter, defendant EDWIN J. SCHULZ was an employee of Homex, its chief accounting officer and the owner of 3,200 shares of Homex common stock.

6. Beginning in or about 1969, and at all relevant times thereafter, defendant HAROLD M. YANOWITCH, an attorney, was an employee of Homex, a member of its board of directors, its chief legal officer and the owner of approximately 160,000 shares of Homex common stock.

7. Beginning in or about 1971, and at all relevant times thereafter, defendant RUBEL L. PHILLIPS, an attorney, was an employee of Homex with an office in Jackson, Mississippi and the owner of an option to purchase 40,000 shares of Homex common stock.

I. FRAUD SCHEME

8. From on or about the 1st day of January, 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury known and unknown, did employ a device, scheme, and artifice to

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defraud Homex's shareholders, officers, directors and others including its auditors, in connection with the offer and sale of securities, to wit, common and preferred stock of Stirling Homex Corporation.

II. THE OBJECT OF THE SCHEME

9. It was the object of said scheme deliberately
- a) to deceive members of the public investing in Homex securities by fraudulently inflating reported earnings and simultaneously
 - b) falsifying and concealing materially adverse information required to have been fairly and truly disclosed.

III. THE MEANS BY WHICH THE FRAUD SCHEME WAS CARRIED OUT

10. It was a part of said scheme to defraud that in 1969, the defendants DAVID STERLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH and EDWIN J. SCHULZ falsely inflated revenues and profits by arranging two "sales" of land at artificially high prices that were induced by and based upon side promises and guarantees given to the buyers. In connection therewith, the defendants signed and filed registration statements with the SEC which fraudulently concealed the following essential facts, among others, about these "sales" which accounted for 18% of net income for the fiscal year ending July 31, 1969: (a) both "sales" involved side promises and agreements given to the buyers including limitations on and guarantees against losses; (b) both "sales" required only minimal down payments with the remainder of the purchase payment being largely postponed for several years; and (c) both "sales" were to financially weak shell corporations without sufficient means to meet the payment obligations.

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11. It was further a part of said scheme to defraud that during 1970 and 1971 the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, and EDWIN J. SCHULZ, would prepare, file with the SEC, and distribute to shareholders annual and interim reports which fraudulently omitted to disclose, among other things: (a) that such "sales" were not being consummated; (b) that in one instance, persons affiliated with or controlled by Homex were substituted as owners of the shell corporation and were secretly guaranteed against losses and indirectly provided with Homex funds to make periodic payments toward the unpaid purchase obligation; and (c) that the payment obligations arising from these "sales" were in fact uncollectible.

12. It was further a part of said scheme to defraud that in 1971 the defendant, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, and EDWIN J. SCHULZ falsely inflated revenues and profits by arranging a third "sale" of land at an artificially high price that was induced by and based upon secret promises and guarantees given to the buyers. In connection therewith, the defendants prepared and filed registration statements and quarterly reports with the SEC which fraudulent concealed the following essential facts, among others, about this "sale" which accounted for nearly half of Homex's earnings for the first half of the fiscal year ending July 31, 1971: (a) that such "sale" involved side promises and agreements given to the buyers including guarantees against losses; (b) that such "sale" involved only a minimal downpayment, borrowed through the use of Homex collateral, with the remainder of the purchase payment being postponed several years; (c) that such "sale" was at a price which had been artificially raised; and (d) that such "sale" was to a financially weak

shell corporation, without sufficient means to meet the payment obligations, and which was owned by individuals associated with a business which, in turn, had derived a material portion of its past revenues from dealings with Homex.

13. It was further a part of said scheme to defraud that in or about July 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH and EDWIN J. SCHULZ prepared, signed and filed with the SEC registration statements and other written representations which falsely and fraudulently stated that Homex recognized income from sales of modules when manufactured modules were assigned to specific contracts. That representation was false because, as the defendants well knew, such assignments had been repeatedly cancelled or reversed with the modules then being reassigned from project to project until, for example, by February 28, 1971, a total of approximately \$13,500,000 of such sales had been written on and off and back onto Homex's books of account. This history of mass reassignments was deliberately withheld from both Homex's auditors and the SEC.

14. It was further a part of said scheme to defraud that during 1971 defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULTZ, and RUBEL L. PHILLIPS fraudulently and falsely inflated Homex's sales and earnings by arranging for a purported arms-length "sale" of modules for \$15,000,000 which was induced by and based upon a forged commitment letter and by secret side promises and agreements given to the buyers. In connection therewith, the defendants prepared and filed registration statements and other reports with the SEC which fraudulently concealed the following essential facts, among others, about

this "sale" which accounted for more than half of Homex's earnings for the nine-months ended April 30, 1971, and all of its earnings for the six months ended January 31, 1971: (1) that such "sale" was based upon a back dated contract not entered into until on or about February 24, 1971, well after the relevant accounting period had ended; (b) that, while said "sales" contract was expressly conditioned on Homex's manufacturing the modules in Mississippi and Homex's obtaining federal funding, in point of fact, Homex had not satisfied either condition; (c) that the purchaser was a financially weak shell corporation, without sufficient means to meet the payment obligations, which Homex had caused to be formed in the first place; and (d) that, during March, 1971, the defendant HAROLD M. YANOWITCH, had employed the forged commitment letter to defraud Homex's auditors into certifying its financial statements.

15. It was further a part of said scheme to defraud that defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ, and RUBEL L. PHILLIPS fraudulently and falsely inflated and overstated Homex's publicly reported assets, revenues and earnings while also fraudulently understating its liabilities, reserves and expenses. In connection therewith, the defendants deliberately falsified and concealed from Homex's auditors material information as to adjustments in its accounts including those relating to: (a) installation division revenues and costs for the period ending July 31, 1970; (b) U.S. Shelter revenues for the period ending February 28, 1971; and (c) deferred, general and administrative expenses for the period ending February 28, 1971.

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16. It was further a part of said scheme to defraud that on or about July 29, 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, and HAROLD M. YANOWITCH prepared and filed with the SEC registration statements and other reports which described Homex's several relations with the United Brotherhood of Carpenters and Joiners of America and its locals. Those statements were materially false and misleading, because as the defendants well knew, but failed to disclose, seven members and officials of the United Brotherhood of Carpenters and Joiners of America had been paid off by having approximately \$240,000 worth of Homex common stock purchased for them at approximately \$76,800 less than the fair market value, and afterwards, when the fair market price had fallen, approximately \$64,000 worth of Homex common stock sold for them at approximately \$136,000 above the market price.

IV. STATUTORY ALLEGATIONS

17. From on or about the 1st day of January 1968, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ, and RUBEL L. PHILLIPS, and others to the Grand Jury known and unknown, unlawfully, willfully and knowingly, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, to wit, the common and preferred stock of Stirling Homex Corporation: (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make

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the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of Stirling Homex Corporation securities.

(Title 15, United States Code, Sections 77q(a) and 77x and Title 18, United States Code, Section 2.).

COUNT TWO

The Grand Jury further charges:

1. On or about July 29, 1971, in the Southern District of New York, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, unlawfully, wilfully and knowingly made and caused to be made untrue statements of material facts in a registration statement and omitted to state material facts required to be stated therein and necessary in order to make the statements therein not misleading.

2. Said registration statement as amended covered 500,000 shares of Homex preferred stock and was required to be filed and was filed with the SEC pursuant to Title 15, United States Code, Sections 77e through 77h and 17 C.F.R. §§ 230.400 to 230.499 and 239.11 promulgated by the SEC thereunder.

3. Each of the allegations in Count One of this Indictment is incorporated and realleged in this Count as if fully set forth herein.

(Title 15, United States Code, Section 77x and Title 18, United States Code, Section 2.).

COUNTS THREE THROUGH EIGHT

The Grand Jury further charges:

1. From on or about January 1, 1968, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J.

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SCHULZ, and RUBEN L. P. LIPS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud the purchasers of Stirling Homex Corporation securities and other persons, and to obtain money and property by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, did take and receive therefrom, and did cause to be delivered by mail according to the directions thereon certain mail matter to be sent and delivered by the Postal Service as hereinafter set forth.

2. Each of the allegations contained in Count One of this indictment is repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offenses charged in Counts Three through Eight of this Indictment.

3. On or about the dates hereinafter set forth in Counts Three through Eight of this Indictment, in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did place and caused to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail according to the directions thereon, the matter hereinafter set forth:

<u>Count</u>	<u>Date</u>	<u>Matter</u>	<u>Addressee</u>
3	8/2/71	Prospectus	Peter R. Cottrell & Mary Lee Cottrell, JT TEN 115 Clinton Street Mount Vernon, N.Y. 10552
4	8/2/71	Prospectus	Ronald J. Benice & Doris P. Benice 25 Stewart Place Mt. Kisco, N.Y.

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<u>Count</u>	<u>Date</u>	<u>Matter</u>	<u>Addressee</u>
5	10/8/71	1971 Annual Report	Joseph Szymanski 200 West 18th St. New York, New York
6	10/8/71	1971 Annual Report	Peter R. Cottrell & Mary Lee Cottrell, JT TEN 115 Clinton Street Mount Vernon, N.Y. 10552
7	12/6/71	Quarterly Report to Shareholders	Joseph Szymanski 200 West 18th Street New York, N.Y.
8	12/6/71	Quarterly Report to Shareholders	Nobumitsu Fukui 53 Greene Street New York, N.Y. 10013

(Title 18, United States Code, Sections 1341 and 2.)

COUNT NINE

The Grand Jury further charges:

1. From on or about the first day of January 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury both known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States and the SEC and to violate Sections 1001 and 1341 of Title 18 and Sections 77q (a), 77x, and 78ff of Title 15, United States Code.

2. It was a part of said conspiracy that the defendants unlawfully, knowingly and wilfully, in matters within the jurisdiction of departments and agencies of the United States, would and did falsify, conceal and cover up by trick, scheme and device material facts, and make false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries in violation of Section 1001 of Title 18, United States Code.

3. It was a further part of said conspiracy that the defendants unlawfully, wilfully and knowingly, would and did devise and intend to devise a scheme and artifice to defraud the purchasers of Stirling Homex Corporation securities and other persons, and to obtain money and property by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, would and did place and cause to be placed in post offices and authorized depositories for mail matter, take and receive therefrom, and cause to be delivered by mail according to the directions thereon certain mail matter to be sent and delivered by the Postal Service in violation of Section 1341 of Title 18, United States Code.

4. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly, by use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, to wit, the common and preferred stock of Stirling Homex Corporation:

- (a) did employ devices, schemes and artifices to defraud;
- (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
- and (c) did engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of Stirling Homex Corporation securities in violation of Section 77q(a) of Title 15, United States Code.

(11)

5. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly would and did make untrue statements of material facts in registration statements required to be filed with the SEC and omitted to state material facts required to be stated therein and necessary in order to make the statements therein not misleading in violation of Section 77x of Title 15, United States Code.

6. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly would and did make false and misleading statements with respect to material facts in annual and quarterly reports required to be filed with the SEC in violation of Section 78ff of Title 15, United States Code.

OVERT ACTS

7. Each of the allegations contained in Count One of this Indictment is repeated and realleged as though fully set forth herein as constituting and describing some of the overt acts by which the defendants committed the offense charged in Count Nine of this indictment. In addition, in furtherance of the said conspiracy and to effect the objects thereof, the defendants did commit the following additional overt acts, among others, in the Southern District of New York and elsewhere:

(1) On or about February 19, 1971, June 30, 1971 and July 6, 1971, defendant EDWIN J. SCHULZ attended meetings in New York, New York.

(2) On or about March 1, 1971, defendant HAROLD M. YANOWITCH wired copies of forged and backdated documents to Homex's New York, New York offices.

(3) On or about August 5, 1971, defendant HAROLD M. YANOWITCH attended a closing in New York, New York where the \$19,000,000 from the sale of the preferred stock was paid.

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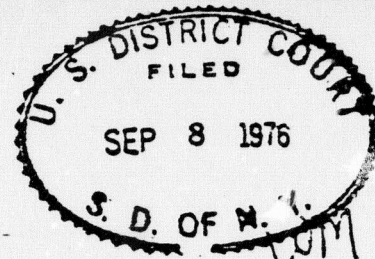
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(4) On or about December 6, 1971, DAVID STIRLING, JR., and WILLIAM G. STIRLING signed and caused to be delivered in the Southern District of New York a quarterly report to shareholders.

(Title 18, United States Code, Section 371.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

76 Cr. 685 (M.E.F.)

DAVID STIRLING, JR.,
WILLIAM G. STIRLING,
HAROLD M. YANOWITCH,
EDWIN J. SCHULZ and
RUBEL L. PHILLIPS,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO STRIKE PARAGRAPHS 9
AND 16 OF THE INDICTMENT.

SIDNEY FELDSHUH
Attorney for Def. Yanowitch
919 Third Avenue
New York, N.Y. 10022
212-752-8231

ALBERT J. GAYNOR
Attorney for Defs. David
Stirling, Jr. & William Stirling
202 Mamaroneck Avenue
White Plains, N.Y. 10601
914-761-2399

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

76 Cr. 685 (M.E.F)

-against-

DAVID STIRLING, JR.,
WILLIAM G. STIRLING,
HAROLD M. YANOWITCH,
EDWIN J. SCHULZ and
RUBEL L. PHILLIPS,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO STRIKE PARAGRAPHS 9
AND 16 OF THE INDICTMENT.

The accompanying affidavit outlines the facts
and to some degree the argument in support of this motion.
They will not be repeated here.

POINT I

RULE 7(d) OF THE FEDERAL RULES
OF CRIMINAL PROCEDURE SANCTIONS
THE DISMISSAL OF SURPLUSAGE FROM
AN INDICTMENT. PARAGRAPHS 9 AND
16 CONSTITUTE HARMFUL SURPLUSAGE
AND SHOULD BE STRICKEN.

Rule 7(d) is:

"Surplusage. The Court on motion of the
defendant may strike surplusage from the indictment or
information".

The decision of Judge Weinfeld (United States v. Verra, S.D.N.Y.1962, 203 F.Supp.87,88-90) has been cited time and again for the principle that matters which are not essential elements of the offense charged should on motion be stricken. Likewise, were the jury to request or have read the indictment, the challenged paragraphs 9 and 16 may well have to be excised because of their highly prejudicial and inflammatory language.

As Judge Weinfeld puts it:

" * * * It is no answer, as the Government suggests, that the matter be left to the trial judge 'and should he decide at the conclusion of the trial that these allegations should not be submitted to the jury, they may then be blocked out.' While it is true that surplusage in an indictment may be disregarded, the inclusion of the questioned allegations serves no purpose other than possible prejudice to the defendants. An indictment should contain a 'plain, concise and definite written statement of the essential facts constituting the offense charged.' Since the defendant's conviction, sentence and appeal in the earlier case are not essential facts of the crime charged in the current indictment and prejudice may inhere in the allegations, the motion under Rule 7(d) to strike paragraphs *** from the indictment is granted."

(United States v. Verra, supra at page 90)

Here too, the defendants' prior conviction and sentence are not essential facts of the crime charged in the indictment. In fact, the omissions to make the

statements alleged in Paragraph 16 do not on their face make misleading the statements made concerning Labor Relations. (See Pgs.3-7 of affidavit).

The inflammatory and prejudicial character of the language is manifest. As for Paragraph 9, the objects of the alleged scheme are:

- i) "deliberately to deceive members of the public",
- ii) "fraudulently inflating reported earnings",
- iii) "simultaneously falsifying"
- iv) "concealing materially adverse information required to have been fairly and truly disclosed".

When Paragraph 9 is compared with Paragraph 8, we find substantially the very same epithetical language, e.g.,

- i) "I. FRAUD SCHEME"
- ii) "did employ a device, a scheme and artifice" with the object
 - iii) "to defraud Homex's shareholders, officers, directors and others including its auditors" (emphasis ours)
 - as to
 - iv) "the offer and sale of securities,

to wit, common and preferred stock of Stirling Homex Corporation"
(emphasis ours)

The scope of Paragraph 9 is embraced by the expansive language of Paragraph 8. The latter plainly asserts that "the offer and sale of securities" is the area of fraud. The former sets out in closest parallel the area of fraud is one "members of the public investing in Homex securities."

In like manner, we could compare each phrase of these paragraphs and truly find paragraph 9 is but a "repeat" of paragraph 8 in thrust, sense and meaning.

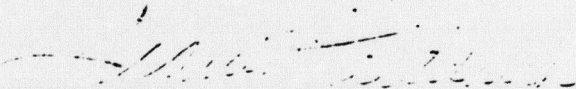
We condemn and challenge the unnecessary repetition as but inflaming an already asserted fire. (See United States v. Bonanno (S.D.N.Y.1959), 177 F.Supp.106,115, 116).

As Judges Weinfeld and Kaufman stress, now is the time to strike.

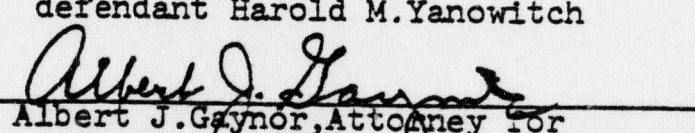
CONCLUSION

PARAGRAPHS 9 AND 16 OF THE INDICTMENT
MUST AND SHOULD BE STRICKEN.

Respectfully submitted,



Sidney Feldshuh, Attorney for
defendant Harold M. Yanowitch



Albert J. Gaynor, Attorney for
defendants, David Stirling, Jr. and
William G. Stirling

WCMacD:d1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :

- v - :

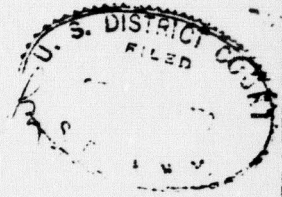
DAVID STIRLING, et al., :

Defendants. :

AFFIDAVIT

76 Cr. 685 (MEF)

----- x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)



W. CULLEN MAC DONALD, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and, as such, have been assigned and am familiar with the above-captioned case.

2. This affidavit is submitted in opposition to the defendants' DAVID STIRLING, JR., WILLIAM G. STIRLING and HAROLD M. YANOWITCH motions to strike paragraph 16 from the Indictment.

3. Attached hereto as exhibit A is a copy of Indictment 74 Cr. 318, filed December 11, 1974, in the United States District Court for the Western District of New York, and charging the defendants DAVID STIRLING, JR. and HAROLD M. YANOWITCH with violations, in nineteen (19) and thirteen (13) counts, respectively, of Section 186 of Title 29, United States Code. Attached hereto as exhibits B and C are copies

(5)

WCMacD:dl

of the judgements convicting DAVID STIRLING, JR. on counts 17, 19 and 20 and HAROLD M. YANOWITCH on each of counts 15 through 28 on their respective pleas of guilty and nolo contendere.

W. Cullen Mac Donald

W. CULLEN MAC DONALD
Assistant United States Attorney

Sworn to before me this

28th day of September, 1976

Olga C. Grampp
NOTARY PUBLIC

OLGA C. GRAMPP
Notary Public New York State
No. 43-4820338
Qualified in Richmond Cty.
Comm. Expires March 30, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DAVID STIRLING, JR.
HAROLD M. YANOWITZ

CRIMINAL NO. 74-318

29 U.S.C. 186(a)(2) and (d)
18 U.S.C. 2

FILED 12-11-74

INDICTMENT

COUNT ONE

ONE GRAND JURY CHARGE: THAT

1. At all times pertinent hereto, Stirling Homax Corporation, a Delaware corporation with principal offices in Avon, New York, was an employer of employees who were employed in an industry affecting commerce, to wit, the manufacture and sale of modular homes.
2. At all times pertinent hereto and prior to on or about August 1, 1970 Henrietta Construction Corporation, a New York corporation with principal offices in Avon, New York, was an employer of employees who were employed in an industry affecting commerce, to wit, the installation of modular homes, and that on or about August 1, 1970 the said employees ceased to be employed by Henrietta Construction Corporation and were thereafter employed by the above-described Stirling Homax Corporation in an industry affecting commerce, to wit, the installation of modular homes.
3. At all times pertinent hereto, David Stirling, Jr. was a person acting in the interest of the aforesaid employers.
4. At all times pertinent hereto, Samuel Ruggiano was an employee of a labor organization which represented the above-described employees of Stirling Homax Corporation, to wit, a general representative of the United Brotherhood of Carpenters and Joiners of America.
5. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did unlawfully, willfully, and knowingly cause R. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homax Corporation common stock, to pay and deliver to Samuel Ruggiano a thing of value, to wit, the sale of 400 shares of said stock owned by R. W. Pressprich & Company, Inc.

to and for the account of Samuel Ruggiano for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWO

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 3 of Count One of this indictment.
2. At all times pertinent hereto, Richard E. Livingston was an officer of a labor organization which represented the above-described employees of Stirling Homax Corporation, to wit, General Secretary of the United Brotherhood of Carpenters and Joiners of America.
3. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did unlawfully, willfully, and knowingly cause E. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homax Corporation common stock, to pay and deliver to Richard E. Livingston a thing of value, to wit, the sale of 400 shares of said stock owned by E. W. Pressprich & Company, Inc. to and for the account of Richard E. Livingston for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT THREE

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 3 of Count One of this indictment.
-

2. At all times pertinent hereto, Patrick J. Campbell was an officer of a labor organization which represented the above-described employees of Stirling Homex Corporation, to wit, a member of the General Executive Board of the United Brotherhood of Carpenters and Joiners of America.

3. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did unlawfully, willfully, and knowingly cause R. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homex Corporation common stock, to pay and deliver to Patrick J. Campbell a thing of value, to wit, the sale of 400 shares of said stock owned by R. W. Pressprich & Company, Inc. to and for the account of Patrick J. Campbell for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 3 of Count One of this indictment.

2. At all times pertinent hereto and prior to on or about April 1, 1971 William Konyha was an employee of a labor organization which represented the above-described employees of Stirling Homex Corporation, to wit, a general representative of the United Brotherhood of Carpenters and Joiners of America. From on or about April 1, 1971 and during all times thereafter pertinent hereto, William Konyha was an officer of a labor organization which represented the above-described employees of Stirling Homex Corporation, to-wit, a member

of the General Executive Board of the United Brotherhood of Carpenters and Joiners of America.

3. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did unlawfully, willfully, and knowingly cause R. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homex Corporation common stock, to pay and deliver to William Konyha a thing of value, to wit, the sale of 1100 shares of said stock owned by R. W. Pressprich & Company, Inc. to and for the account of William Konyha for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT FIVE

THE GRAND JURY CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1, 2, and 3 of Count One of this indictment.
2. At all times pertinent hereto and prior to on or about July 12, 1971 Elmer E. Jacobs, Jr. was an officer of a labor organization which would admit to membership the above-described employees of Henrietta Construction Corporation and Stirling Homex Corporation, to wit, Secretary-Treasurer of the Summit, Medina, and Portage Counties District Council of Carpenters (Akron, Ohio), United Brotherhood of Carpenters and Joiners of America.

From on or about July 12, 1971 and during all time thereafter pertinent hereto, Elmer E. Jacobs, Jr. was an officer and employee of a labor organization which would admit to membership the above-described employees of Stirling Homex Corporation, to wit, a

vice president and organizer respectively of the Ohio State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America.

3. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause R. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homax Corporation common stock, to pay and deliver to Elmer E. Jacobs, Jr. a thing of value, to wit, the sale of 1100 shares of said stock owned by R. W. Pressprich & Company, Inc. to and for the account of Elmer E. Jacobs, Jr. for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT SIX

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1, 2, and 3 of Count One of this indictment.

2. At all times pertinent hereto, Milan Marsh was an officer of labor organizations which would admit to membership the above-described employees of Henrietta Construction Corporation and Stirling Homax Corporation, to wit, Secretary-Treasurer of the Ohio State Council of Carpenters and President of the Mahoning, Trumbull, and Mercer Counties Carpenters District Council (Youngstown, Ohio), United Brotherhood of Carpenters and Joiners of America.

3. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did

unlawfully, willfully, and knowingly cause R. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homex Corporation common stock, to pay and deliver to Milan Marsh a thing of value, to wit, the sale of 1100 shares of said stock owned by R. W. Pressprich & Company, Inc. to and for the account of Milan Marsh for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1, 2, and 3 of Count One of this indictment.
2. At all times pertinent hereto, Joseph J. Catalfano was an officer of a labor organization which would admit to membership the above-described employees of Henrietta Construction Corporation and Stirling Homex Corporation, to wit, Secretary-Treasurer of the Carpenters District Council of Rochester and Vicinity, United Brotherhood of Carpenters and Joiners of America.
3. On or about March 1, 1970 in the Western District of New York and elsewhere, the defendant, DAVID STIRLING, JR., did unlawfully, willfully, and knowingly cause R. W. Pressprich & Company, Inc., a broker-dealer in Stirling Homex Corporation common stock, to pay and deliver to Joseph J. Catalfano a thing of value, to wit, the sale of 300 shares of said stock owned by R. W. Pressprich & Company, Inc. to and for the account of Joseph J. Catalfano for a price approximately seven dollars below the prevailing market price for said stock.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 through 4 of Count One of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to Samuel Ruggiano a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend Samuel Ruggiano \$13,744 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT NINE

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Two of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to Richard E. Livingston a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend Richard E. Livingston \$13,744 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Three of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to Patrick J. Campbell a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend Patrick J. Campbell \$13,744 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT ELEVEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Four of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to William Konyha a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend William Konyha \$37,780 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWELVE

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Five of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to Elmer E. Jacobs, Jr. a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend Elmer E. Jacobs, Jr. \$37,780 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT THIRTEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Six of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to Milan Marsh a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend Milan Marsh \$37,780 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT FOURTEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Seven of this indictment.

2. On or about March 9, 1970 in the Western District of New York, the defendant, DAVID STIRLING, JR., did unlawfully, willfully and knowingly cause the Central Trust Company of Rochester, New York to pay and deliver to Joseph J. Catalfano a thing of value, to wit, DAVID STIRLING, JR. caused the Central Trust Company to lend Joseph J. Catalfano \$10,308 by giving his guaranty for payment of the principal amount and interest of said loan.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT FIFTEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Two of this indictment.

2. On or about November 11, 1970 in the Western District of New York and elsewhere, the defendant, HAROLD M. YAKOWITZ, a person acting in the interest of the above-described employer, did unlawfully, willfully, and knowingly cause William A. Shea to pay and deliver to Richard E. Livingston a thing of value, to wit, the purchase from Richard E. Livingston by William A. Shea of 400 shares of Stirling Homex Corporation stock at a price approximately \$10 per share above the prevailing market price for said stock in consideration for the agreement of David Stirling, Jr. to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT SIXTEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Three of this indictment.

2. On or about November 11, 1970 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, did unlawfully, willfully and knowingly cause William A. Shea to pay and deliver to Patrick J. Campbell a thing of value, to wit, the purchase from Patrick J. Campbell by William A. Shea of 400 shares of Stirling Homex Corporation common stock at a price approximately \$10 per share over the prevailing market price for said stock in consideration for the agreement by David Stirling, Jr. to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT SEVENTEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1, 3, and 4 of Count One of this indictment.

2. On or about November 11, 1971 in the Western District of New York and elsewhere, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, persons acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause William A. Shea to pay and deliver to Samuel Ruggiano a thing of value, to wit, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, caused William A. Shea to give to Central Trust Company of Rochester, New York his promissory note for \$200,621.57 plus interest, part of which promissory note

was used to repay the outstanding principal amount and interest of a loan by Central Trust Company in the name of and for the account of Samuel Ruggiano and in consideration thereof the defendant DAVID STIRLING, JR. agreed to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT EIGHTEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Four of this indictment.

2. On or about November 11, 1971 in the Western District of New York and elsewhere, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, persons acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause William A. Shea to pay and deliver to William Konyha a thing of value, to wit, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, caused William A. Shea to give to Central Trust Company of Rochester, New York his promissory note for \$200,621.57 plus interest, part of which promissory note was used to repay the outstanding principal amount and interest of a loan by Central Trust Company in the name of and for the account of William Konyha and in consideration thereof the defendant DAVID STIRLING, JR. agreed to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT NINETEEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Five of this indictment.

2. On or about November 11, 1971 in the Western District of New York and elsewhere, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, persons acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause William A. Shea to pay and deliver to Elmer E. Jacobs, Jr. a thing of value, to wit, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, caused William A. Shea to give to Central Trust Company of Rochester, New York his promissory note for \$200,621.57 plus interest, part of which promissory note was used to repay the outstanding principal amount and interest of a loan by Central Trust Company in the name of and for the account of Elmer E. Jacobs, Jr. and in consideration thereof the defendant DAVID STIRLING, JR. agreed to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Six of this indictment.

2. On or about November 11, 1971 in the Western District of New York and elsewhere, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, persons acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause William A. Shea to pay and deliver to Milan Martin a thing of value, to wit, the defendants, DAVID

STIRLING, JR. and HAROLD M. YANOWITZ, caused William A. Shea to give to Central Trust Company of Rochester, New York his promissory note for \$200,621.57 plus interest, part of which promissory note was used to repay the outstanding principal amount and interest of a loan by Central Trust Company in the name of and for the account of Milan Marsh and in consideration thereof the defendant DAVID STIRLING, JR. agreed to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-ONE

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Seven of this indictment.
2. On or about November 11, 1971 in the Western District of New York and elsewhere, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, persons acting in the interest of the above-described employer, Stirling Romax Corporation, did unlawfully, willfully, and knowingly cause William A. Shea to pay and deliver to Joseph J. Catalfano a thing of value, to wit, the defendants, DAVID STIRLING, JR. and HAROLD M. YANOWITZ, caused William A. Shea to give to Central Trust Company of Rochester, New York his promissory note for \$200,621.57 plus interest, part of which promissory note was used to repay the outstanding principal amount and interest of a loan by Central Trust Company in the name of and for the account of Joseph J. Catalfano and in consideration thereof the defendant DAVID STIRLING, JR. agreed to indemnify and hold harmless William A. Shea for any loss in said transaction.

All in violation of Section 136(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-TWO

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1, 3, and 4 of Count One of this indictment.

2. From on or about April 16, 1971 to on or about April 20, 1971 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to Samuel Ruggiano a thing of value, to wit, the defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay approximately \$38.76 to the Central Trust Company of Rochester, New York for application to interest in connection with a loan to Samuel Ruggiano at the Central Trust Company.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-THREE

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Two of this indictment.

2. From on or about February 24, 1971 to on or about April 15, 1971 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to Richard E. Livingston a thing of value, to wit, the

defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay approximately \$869.11 to the Central Trust Company of Rochester, New York for application to principal and interest in connection with a loan to Richard E. Livingston at the Central Trust Company.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-FOUR

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Three of this indictment.

2. From on or about January 5, 1971 to on or about February 26, 1971 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to Patrick J. Campbell a thing of value, to wit, the defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay approximately \$1384.40 to the Central Trust Company of Rochester, New York for application to principal and interest in connection with a loan to Patrick J. Campbell at the Central Trust Company.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-FIVE

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Four of this indictment.

2. From on or about January 5, 1971 to on or about July 8, 1971 in the Western District of New York, the defendant, HAROLD M.

- 17 -

YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to William Konyha a thing of value, to wit, the defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay approximately \$3717.46 to the Central Trust Company of Rochester, New York for application to interest in connection with a loan to William Konyha at the Central Trust Company.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-SIX

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Five of this indictment.

2. From on or about January 5, 1971 to on or about July 8, 1971 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to Elmer E. Jacobs, Jr. a thing of value, to wit, the defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay approximately \$3762.28 to the Central Trust Company of Rochester, New York for application to interest in connection with a loan to Elmer E. Jacobs, Jr. at the Central Trust Company.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-SEVEN

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Six of this indictment.

2. From on or about January 5, 1971 to June 2, 1971 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to Milan Marsh a thing of value, to wit, the defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay approximately \$3526.14 to the Central Trust Company of Rochester, New York for application to interest in connection with a loan to Milan Marsh at the Central Trust Company.

All in violation of Section 186(a)(2) and (4), Title 29, and Section 2, Title 18, United States Code.

COUNT TWENTY-EIGHT

THE GRAND JURY FURTHER CHARGES: THAT

1. The Grand Jury hereby incorporates by reference paragraphs 1 and 2 of Count Seven of this indictment.

2. From on or about January 5, 1971 to on or about July 8, 1971 in the Western District of New York, the defendant, HAROLD M. YANOWITZ, a person acting in the interest of the above-described employer, Stirling Homex Corporation, did unlawfully, willfully, and knowingly cause the Stirling Homex Corporation to pay and deliver to Joseph J. Catalano a thing of value, to wit, the defendant, HAROLD M. YANOWITZ, caused Stirling Homex Corporation to pay

- 19 -

approximately \$1026.51 to the Central Trust Company of Rochester, New York for application to interest in connection with a loan to Joseph J. Catalfano at the Central Trust Company.

All in violation of Section 186(a)(2) and (d), Title 29, and Section 2, Title 18, United States Code.

A TRUE BILL

FOREMAN

JOHN T. ELVIN
United States Attorney

DAVID G. LARIMER
Assistant United States Attorney

GERALD A. TONER
Special Attorney
U.S. Department of Justice

No. _____

UNITED STATES DISTRICT COURT

Western District of New York

District

THE UNITED STATES OF AMERICA

vs.

DAVID STIRLING, JR.

HAROLD M. YANOWITZ

INDICTMENT

A true bill,

Foreman,

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Ball, § _____

United States of America vs.

0-7-3044T

HAROLD M. YANOW LTCI

WESTERN DISTRICT OF NEW YORK

DOCKET NO. 2-1, CCH-1971-013

RECEIVED AND RECORDED

In the presence of the attorney for the government
the defendant appeared in person on this day 1965

MONTH	DAY	YEAR
February	2	1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL

Robert Napier

(Name of counsel)

PLEA

 GUILTY, and the court being satisfied that there is a factual basis for the plea,

☒ NOLO CONTENDERE,

 NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of Violating the Taft-Hartley Act, by making illegal payments to Union officers of the United Brotherhood of Carpenters & Joiners of America, in violation of Title 29, U.S.C., Section 186(a)(2) and (d), and Title 18, U.S.C., Sec. 2 Cts. 15 thru 28

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~THE SHERIFF SHALL~~

Defendant is sentenced as follows: The Court: On each of counts 15 through 28 inclusive, I impose a fine of \$1,000.00. I remit the fines on all cts. except 20. The fine to be paid in the Clerk's office thirty days from the date of this sentence.

**SPECIAL
CONDITIONS
OF
PROBATION**

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

☐ U.S. Magistrate

Harold P. Burke, U. S. District Judge

February 2, 1976

WAC-267: A TRUE COPY

JOEL E. ADAMS, Clerk

7. 11. 1914

Original filed 1/10/1964

United States of America vs.

United States District Court for

DEFENDANT

DAVID SEIBLING, JR.

WESTERN DISTRICT OF NEW YORK

FILED 10 11 22 1976

CR-1976-218

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
February 2, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Charles Crimi

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYFINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.Defendant has been convicted as charged of the offense(s) of Violating the Taft-Hartley Act,
by making illegal payments to union officers of the United
Brotherhood of carpenters & Joiners of America, in violation of
Title 29, U.S.C., Section 186(a)(2) and (d), and Title 18,
U.S.C., Sect. 2 Cts. 17, 19, and 20SENTENCE
OR
PROBATION
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~THE COURT~~The defendant is sentenced as follows: The Court: I impose a
sentence of three months on each of Cts. 17, 19, and 20 to run
concurrent. I suspend the execution of the sentence and place
the defendant on probation for a period of three months. I make
as a condition of probation that the defendant comply with the
subpoena already served on him in the Southern District of N.Y.
I impose a fine of \$2,000 on each of Cts. 17, 19, and 20. I remit
the fines on all Cts. except 20. The fine to be paid in the Clerk's
office thirty days from the date of this sentence.

Cts. 1 thru 14 and 18 & 21 are hereby dismissed.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATIONIn addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the
reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke
probation for a violation occurring during the probation period.COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

Harold P. Burke, U. S. District Judge

Date February 2, 1976

ATTEST: A TRUE COPY

JOHN K. ADAMS, Clerk

By *[Signature]*

Deputy Clerk

Original filed 2-16-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

DEMAND FOR BILL OF
PARTICULARS

-against-

76 Cr. 685 (M.E.F.)

DAVID STIRLING, JR.,
WILLIAM G. STIRLING,
HAROLD M. YANOWITCH,
EDWIN J. SCHULZ and
RUBEL L. PHILLIPS,

Defendants.

S I R S:

Upon the proceedings herein, the defendants,
DAVID STIRLING, JR., WILLIAM G. STIRLING and HAROLD M. YANOWITCH
jointly move for a Bill of Particulars pursuant to Rule 7(f)
of the Rules of Federal Criminal Procedure:

AS TO COUNT ONE OF THE INDICTMENT

1. Paragraph 8: State the names of the
individuals or other entities known to the Grand Jury.

2. Paragraph 9: Set forth which earnings
were allegedly inflated and which information was allegedly
falsified and concealed.

3. Paragraph 10: (a) State which sales of
land are referred to: the prices thereof, the number, nature
and substance of the alleged promises and guarantees given to
the buyers and the names of the said buyers.

(b) State which defendants
signed and filed the registration statements: set forth a
copy of the registration statements.

(c) State the number, nature

and substance of all of the alleged side promises and agreements given to the buyers.

(d) Set forth the terms and conditions of the "sales": state the names of the alleged "financially weak shell corporations".

4. Paragraph 11: (a) Identify, describe and set forth a copy of the shareholders' annual and interim reports.

(b) Identify the persons affiliated with or controlled by Homex referred to in Paragraph 11(b) of the Indictment and describe fully the nature and substance of the secret guarantees allegedly made.

(c) Set forth the reasons why payment of the said obligations referred to in Paragraph 11(c) of the Indictment were uncollectible.

5. Paragraph 12: (a) Identify which revenues and property and for which period were allegedly falsely inflated.

(b) Identify and set forth the details of the "third sale of land".

(c) Describe the nature and substance of the alleged secret promises and guarantees given to the buyers.

(d) Identify and set forth copies of the registration statements and quarterly reports with the SEC; state what each defendant did in the preparation and filing of the said statements.

(e) State the amount of the down payment referred to in Paragraph 12(b) of the Indictment and identify the collateral used by Homex.

(f) State the alleged artificially raised price and the fair market value of the property referred to in Paragraph 12(c) of the Indictment: identify the "shell corporation" and the individual owners thereof referred to in the same paragraph and sub-paragraph of the Indictment.

6. Paragraph 13: (a) Identify and set forth a copy of the registration and other written representations.

(b) Identify by paragraph reference to the said registration and other written representations the alleged false statements therein.

(c) State in what ways the re-assignments were deliberately withheld from the Homex auditors and name said auditors, and the SEC.

7. Paragraph 14: (a) Identify which Homex sales and earnings periods were allegedly fraudulently and falsely inflated.

(b) Identify and describe the purported arms-length "sale" of modules for \$15,000,000.

(c) Identify, describe and set forth a copy of the alleged forged commitment letter.

(d) Set forth the substance of the alleged secret side promises and agreements given to the buyers.

(e) Identify the buyers.

(f) Identify and set forth a copy of the registration statements and other reports filed with the SEC which allegedly were fraudulent and identify which paragraphs therein which allegedly fraudulently concealed the facts referred to in Paragraph 14 of the Indictment.

(g) Identify and set forth a copy of the alleged "back-dated contract".

(h) Identify the shell corporation which Homex had allegedly caused to be formed.

(i) State how the defendant Harold M. Yanowitch employed the forged commitment letter.

(j) State what each defendant did to effect the charges made in Paragraph 14 of the Indictment.

8. Paragraph 15: (a) State in what manner each defendants individually and collectively (1) inflated and overstated Homex's reported assets, revenues and earnings and understated Homex's liabilities, reserves and expenses, (2) falsified and concealed from Homex's auditors material information as to adjustments of its accounts including those described in Paragraph 15(a), (b) and (c) of the Indictment.

9. Paragraph 16: (a) Identify, describe and set forth the Homex SEC Registration Statements and other reports referred to in Paragraph 16 of the Indictment.

(b) Identify the seven (7) members and officials of the United Brotherhood of Carpenters and Joiners of America.

10. Paragraph 17: (a) Identify the "others" to the Grand Jury known.

(b) Identify which means and instruments of transportation and communication in interstate commerce were used by the defendants.

(c) Describe the devices, schemes and artifices to defraud employed by the defendants and set forth which defendant employed each said device, scheme and artifice referred to in Paragraph 17(a) of the Indictment.

(d) State the amount of the money obtained, describe the property obtained and identify and describe particularly the untrue statements of material facts and omissions therein referred to in Paragraph 17(b) of the Indictment.

(e) Identify and describe the transactions, practices and courses of business referred to in Paragraph 17(c) of the Indictment.

AS TO COUNT TWO OF THE INDICTMENT

11. Identify and set forth a copy of the registration statement.

12. Identify the statements of material facts and describe how they are untrue; set forth the omissions required to be set forth in the registration statements in order not to make the statements misleading.

AS TO COUNTS THREE THROUGH EIGHT OF
THE INDICTMENT

13. Identify, describe and set forth any means by which the defendants allegedly committed the offenses charged in these Counts if different from or in addition to the particulars to be provided with respect to Count One.

AS TO COUNT NINE OF THE INDICTMENT

14. Identify, describe and set forth a copy of each false, fictitious and fraudulent statement and representation, false writing and document alleged in Paragraph 2 of Count Nine in the Indictment.

15. Set forth what each defendant did with respect to each of the statements, representations, false writings and documents alleged in Paragraph 2 in Count Nine of the Indictment.

16. Describe the devices, schemes and artifices to defraud, identify and describe the money, property, untrue statements and omissions of material facts, the transactions, practices and courses of business which operated as a fraud and deceit upon purchasers of Homex securities as set forth in Paragraph 4 of Count Nine of the Indictment.

17. Identify, describe and set forth a copy of the registration statements and designate wherein there were omissions of material facts as alleged in Paragraph 5 of Count Nine of the Indictment.

18. Identify, describe and set forth a copy of each report and identify therein which statements were misleading and why the same was so misleading as alleged in Paragraph 6 of Count Nine of the Indictment.

19. Overt Acts: (1) Identify the individuals who were in attendance at the meetings set forth.

(2) Set forth where, when and how the defendant, HAROLD M. YANOWITCH, allegedly wired copies of forged and back-dated documents to Homex's New York offices; set forth a copy of each of the documents referred to herein.

(3) Identify the individuals in attendance at the closing in New York attended by Harold M. Yanowitch and where the meeting took place.

(4) Identify the quarterly report to shareholders referred to in sub-paragraph 4 of the Overt Acts; set forth a copy thereof and reveal where in the Southern District of New York was the alleged report signed and caused to be delivered by the defendants, David Stirling, Jr., and William G. Stirling.

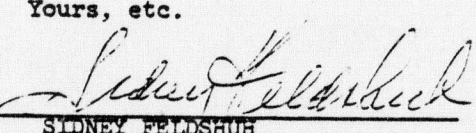
Dated: New York, N.Y.
September 7, 1976. .

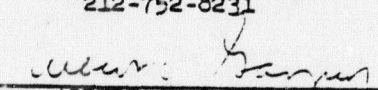
TO:

Hon. Robert B. Fiske, Jr.
United States Attorney
Southern District of New York
Foley Sq. N.Y. 10007
Att: Cullen MacDonald, Esq.

Clerk, U.S. District Court
Southern District of
New York
United States Courthouse
Foley Square, N.Y. 10007

Yours, etc.


SIDNEY FELDSHUH
Attorney for Defendant,
Harold M. Yanowitch
919 Third Avenue
New York, N.Y. 10022
212-752-8231


ALBERT J. GAYNOR
Attorney for Defendants,
David Stirling, Jr. and
William G. Stirling
202 Mamaroneck Avenue
White Plains, N.Y. 10601
914-761-2399

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

- v - :

INDICTMENT

DAVID STIRLING, JR., : 76 Cr.
WILLIAM G. STIRLING, :
HAROLD M. YANOWITCH, :
EDWIN J. SCHULZ, and :
RUBEL L. PHILLIPS, :

Defendants. :

-----x
COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all relevant times, the Stirling Homex Corporation ("Homex") was incorporated under the laws of the State of Delaware and maintained offices in the Southern District of New York and elsewhere. Homex was principally engaged in the business of manufacturing and installing factory-built modular housing.

2. On or about February 19, 1970, Homex registered 1,175,000 shares of its common stock for sale with the Securities and Exchange Commission ("SEC"), an agency of the United States, and sold that stock to members of the public for approximately \$19,000,000; on or about July 29, 1971, Homex registered 500,000 shares of its preferred stock for sale with the SEC and sold that stock to members of the public for approximately \$20,000,000; thereafter there existed in New York, New York, and elsewhere, a public over-the-counter market for Homex common and preferred stock. Less than a year later, on July 12, 1972, Homex was bankrupt.

3. At all relevant times, defendant DAVID STIRLING, JR., was the chief executive officer of Homex, chairman of its board of directors and the owner of a controlling block

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of approximately 2,000,000 shares of Homex common stock. On February 19, 1970, he sold 110,100 shares of his Homex common stock for approximately \$1,600,000.

4. At all relevant times, defendant WILLIAM G. STIRLING was the president of Homex, a member of its board of directors and the owner of a controlling block of approximately 2,000,000 shares of Homex common stock. On February 19, 1970, he sold 112,000 shares of his Homex common stock for approximately \$1,700,000.

5. Beginning in or about 1968 and at all relevant times thereafter, defendant EDWIN J. SCHULZ was an employee of Homex, its chief accounting officer and the owner of 3,200 shares of Homex common stock.

6. Beginning in or about 1969, and at all relevant times thereafter, defendant HAROLD M. YANOWITCH, an attorney, was an employee of Homex, a member of its board of directors, its chief legal officer and the owner of approximately 160,000 shares of Homex common stock.

7. Beginning in or about 1971, and at all relevant times thereafter, defendant RUBEL L. PHILLIPS, an attorney, was an employee of Homex with an office in Jackson, Mississippi and the owner of an option to purchase 40,000 shares of Homex common stock.

I. FRAUD SCHEME

8. From on or about the 1st day of January, 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury known and unknown, did employ a device, scheme, and artifice to

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defraud Homex's shareholders, officers, directors and others including its auditors, in connection with the offer and sale of securities, to wit, common and preferred stock of Stirling Homex Corporation.

II. THE OBJECT OF THE SCHEME

9. It was the object of said scheme deliberately
- a) to deceive members of the public investing in Homex securities by fraudulently inflating reported earnings and simultaneously
 - b) falsifying and concealing materially adverse information required to have been fairly and truly disclosed.

III. THE MEANS BY WHICH THE FRAUD SCHEME WAS CARRIED OUT

10. It was a part of said scheme to defraud that in 1969, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH and EDWIN J. SCHULZ falsely inflated revenues and profits by arranging two "sales" of land at artificially high prices that were induced by and based upon side promises and guarantees given to the buyers. In connection therewith, the defendants signed and filed registration statements with the SEC which fraudulently concealed the following essential facts, among others, about these "sales" which accounted for 18% of net income for the fiscal year ending July 31, 1969: (a) both "sales" involved side promises and agreements given to the buyers including limitations on and guarantees against losses; (b) both "sales" required only minimal down payments with the remainder of the purchase payment being largely postponed for several years; and (c) both "sales" were to financially weak shell corporations without sufficient means to meet the payment obligations.

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11. It was further a part of said scheme to defraud that during 1970 and 1971 the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, and EDWIN J. SCHULZ, would prepare, file with the SEC, and distribute to shareholders annual and interim reports which fraudulently omitted to disclose, among other things: (a) that such "sales" were not being consummated; (b) that in one instance, persons affiliated with or controlled by Homex were substituted as owners of the shell corporation and were secretly guaranteed against losses and indirectly provided with Homex funds to make periodic payments toward the unpaid purchase obligation; and (c) that the payment obligations arising from these "sales" were in fact uncollectible.

12. It was further a part of said scheme to defraud that in 1971 the defendant, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, and EDWIN J. SCHULZ falsely inflated revenues and profits by arranging a third "sale" of land at an artificially high price that was induced by and based upon secret promises and guarantees given to the buyers. In connection therewith, the defendants prepared and filed registration statements and quarterly reports with the SEC which fraudulent concealed the following essential facts, among others, about this "sale" which accounted for nearly half of Homex's earnings for the first half of the fiscal year ending July 31, 1971: (a) that such "sale" involved side promises and agreements given to the buyers including guarantees against losses; (b) that such "sale" involved only a minimal downpayment, borrowed through the use of Homex collateral, with the remainder of the purchase payment being postponed several years; (c) that such "sale" was at a price which had been artificially raised; and (d) that such "sale" was to a financially weak

shell corporation, without sufficient means to meet the payment obligations, and which was owned by individuals associated with a business which, in turn, had derived a material portion of its past revenues from dealings with Homex.

13. It was further a part of said scheme to defraud that in or about July 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH and EDWIN J. SCHULZ prepared, signed and filed with the SEC registration statements and other written representations which falsely and fraudulently stated that Homex recognized income from sales of modules when manufactured modules were assigned to specific contracts. That representation was false because, as the defendants well knew, such assignments had been repeatedly cancelled or reversed with the modules then being reassigned from project to project until, for example, by February 28, 1971, a total of approximately \$13,500,000 of such sales had been written on and off and back onto Homex's books of account. This history of mass reassignments was deliberately withheld from both Homex's auditors and the SEC.

14. It was further a part of said scheme to defraud that during 1971 defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULTZ, and RUBEL L. PHILLIPS fraudulently and falsely inflated Homex's sales and earnings by arranging for a purported arms-length "sale" of modules for \$15,000,000 which was induced by and based upon a forged commitment letter and by secret side promises and agreements given to the buyers. In connection therewith, the defendants prepared and filed registration statements and other reports with the SEC which fraudulently concealed the following essential facts, among others, about

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this "sale" which accounted for more than half of Homex's earnings for the nine-months ended April 30, 1971, and all of its earnings for the six months ended January 31, 1971: (1) that such "sale" was based upon a back dated contract not entered into until on or about February 24, 1971, well after the relevant accounting period had ended; (b) that, while said "sales" contract was expressly conditioned on Homex's manufacturing the modules in Mississippi and Homex's obtaining federal funding, in point of fact, Homex had not satisfied either condition; (c) that the purchaser was a financially weak shell corporation, without sufficient means to meet the payment obligations, which Homex had caused to be formed in the first place; and (d) that, during March, 1971, the defendant HAROLD M. YANOWITCH, had employed the forged commitment letter to defraud Homex's auditors into certifying its financial statements.

15. It was further a part of said scheme to defraud that defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ, and RUBEL L. PHILLIPS fraudulently and falsely inflated and overstated Homex's publicly reported assets, revenues and earnings while also fraudulently understating its liabilities, reserves and expenses. In connection therewith, the defendants deliberately falsified and concealed from Homex's auditors material information as to adjustments in its accounts including those relating to: (a) installation division revenues and costs for the period ending July 31, 1970; (b) U.S. Shelter revenues for the period ending February 28, 1971; and (c) deferred, general and administrative expenses for the period ending February 28, 1971.



16. It was further a part of said scheme to defraud that on or about July 29, 1971, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, and HAROLD M. YANOWITCH prepared and filed with the SEC registration statements and other reports which described Homex's several relations with the United Brotherhood of Carpenters and Joiners of America and its locals. Those statements were materially false and misleading, because as the defendants well knew, but failed to disclose, seven members and officials of the United Brotherhood of Carpenters and Joiners of America had been paid off by having approximately \$240,000 worth of Homex common stock purchased for them at approximately \$76,800 less than the fair market value, and afterwards, when the fair market price had fallen, approximately \$64,000 worth of Homex common stock sold for them at approximately \$136,000 above the market price.

IV. STATUTORY ALLEGATIONS

17. From on or about the 1st day of January 1968, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ, and RUBEL L. PHILLIPS, and others to the Grand Jury known and unknown, unlawfully, willfully and knowingly, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, to wit, the common and preferred stock of Stirling Homex Corporation: (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make

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the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of Stirling Homex Corporation securities.

(Title 15, United States Code, Sections 77q(a) and 77x and Title 18, United States Code, Section 2.).

COUNT TWO

The Grand Jury further charges:

1. On or about July 29, 1971, in the Southern District of New York, defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, unlawfully, wilfully and knowingly made and caused to be made untrue statements of material facts in a registration statement and omitted to state material facts required to be stated therein and necessary in order to make the statements therein not misleading.

2. Said registration statement as amended covered 500,000 shares of Homex preferred stock and was required to be filed and was filed with the SEC pursuant to Title 15, United States Code, Sections 77e through 77h and 17 C.F.R. §§ 230.400 to 230.499 and 239.11 promulgated by the SEC thereunder.

3. Each of the allegations in Count One of this Indictment is incorporated and realleged in this Count as if fully set forth herein.

(Title 15, United States Code, Section 77x and Title 18, United States Code, Section 2.).

COUNTS THREE THROUGH EIGHT

The Grand Jury further charges:

1. From on or about January 1, 1968, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J.

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SCHULZ, and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud the purchasers of Stirling-Womex Corporation securities and other persons, and to obtain money and property by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, did take and receive therefrom, and did cause to be delivered by mail according to the directions thereon certain mail matter to be sent and delivered by the Postal Service as hereinafter set forth.

2. Each of the allegations contained in Count One of this indictment is repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offenses charged in Counts Three through Eight of this Indictment.

3. On or about the dates hereinafter set forth in Counts Three through Eight of this Indictment, in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did place and caused to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail according to the directions thereon, the matter hereinafter set forth:

<u>Count</u>	<u>Date</u>	<u>Matter</u>	<u>Addressee</u>
3	8/2/71	Prospectus	Peter R. Cottrell & Mary Lee Cottrell, JT ISN 115 Clinton Street Mount Vernon, N.Y. 10552
4	8/2/71	Prospectus	Ronald J. Benice & Doris P. Benice 25 Stewart Place Mt. Plisco, N.Y.

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<u>Count</u>	<u>Date</u>	<u>Matter</u>	<u>Addressee</u>
5	10/8/71	1971 Annual Report	Joseph Szymanski 200 West 18th St. New York, New York
6	10/8/71	1971 Annual Report	Peter R. Cottrell & Mary Lee Cottrell, JT TEN 115 Clinton Street Mount Vernon, N.Y. 10552
7	12/6/71	Quarterly Report to Shareholders	Joseph Szymanski 200 West 18th Street New York, N.Y.
8	12/6/71	Quarterly Report to Shareholders	Nobunitsu Fukui 53 Greene Street New York, N.Y. 10013

(Title 18, United States Code, Sections 1341 and 2.)

COUNT NINE

The Grand Jury further charges:

1. From on or about the first day of January 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBEL L. PHILLIPS, the defendants, and others to the Grand Jury both known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States and the SEC and to violate Sections 1001 and 1341 of Title 18 and Sections 77c(a), 77x, and 78ff of Title 15, United States Code.

2. It was a part of said conspiracy that the defendants unlawfully, knowingly and wilfully, in matters within the jurisdiction of departments and agencies of the United States, would and did falsify, conceal and cover up by trick, scheme and device material facts, and make false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries in violation of Section 1001 of Title 18, United States Code.

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3. It was a further part of said conspiracy that the defendants unlawfully, wilfully and knowingly, would and did devise and intend to devise a scheme and artifice to defraud the purchasers of Stirling Homex Corporation securities and other persons, and to obtain money and property by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, would and did place and cause to be placed in post offices and authorized depositories for mail matter, take and receive therefrom, and cause to be delivered by mail according to the directions thereon certain mail matter to be sent and delivered by the Postal Service in violation of Section 1341 of Title 18, United States Code.

4. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly, by use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, to wit, the common and preferred stock of Stirling Homex Corporation: (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of Stirling Homex Corporation securities in violation of Section 77q(a) of Title 15, United States Code.

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5. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly would and did make untrue statements of material facts in registration statements required to be filed with the SEC and omitted to state material facts required to be stated therein and necessary in order to make the statements therein not misleading in violation of Section 77x of Title 15, United States Code.

6. It was further a part of said conspiracy that the defendants unlawfully, wilfully and knowingly would and did make false and misleading statements with respect to material facts in annual and quarterly reports required to be filed with the SEC in violation of Section 78ff of Title 15, United States Code.

OVERT ACTS

7. Each of the allegations contained in Count One of this Indictment is repeated and realleged as though fully set forth herein as constituting and describing some of the overt acts by which the defendants committed the offense charged in Count Nine of this indictment. In addition, in furtherance of the said conspiracy and to effect the objects thereof, the defendants did commit the following additional overt acts, among others, in the Southern District of New York and elsewhere:

(1) On or about February 19, 1971, June 30, 1971 and July 6, 1971, defendant EDWIN J. SCHULZ attended meetings in New York, New York.

(2) On or about March 1, 1971, defendant HAROLD M. YANOWITCH wired copies of forged and backdated documents to Homex's New York, New York offices.

(3) On or about August 5, 1971, defendant HAROLD M. YANOWITCH attended a closing in New York, New York where the \$19,000,000 from the sale of the preferred stock was paid.

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(4) On or about December 6, 1971, DAVID STIRLING, JR., and WILLIAM G. STIRLING signed and caused to be delivered in the Southern District of New York a quarterly report to shareholders.

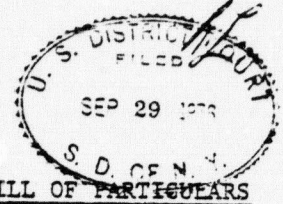
(Title 18, United States Code, Section 371.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA, :

- v - :

DAVID STIRLING, et al., :

Defendants. :

BILL OF PARTICULARS

76 Cr. 685 (MEF)

S I R S :

The United States of America, as and for its Bill of Particulars herein, alleges:

1. Unless the context otherwise requires, in all counts of the Indictment and throughout this Bill of Particulars (and supplements hereto), the phrase "at all relevant times" generally encompasses the period commencing on or about January 1, 1968, and concluding on or about July 12, 1972. Additionally, and unless the context indicates otherwise, in all Counts of the Indictment, the persons alleged to have been defrauded generally include all segments of the Homex investing public including for example, but not limited to: (a) actual purchasers and sellers of Homex common and preferred stock; (b) prospective purchasers and sellers of Homex common and preferred stock; (c) lenders and prospective lenders against the collateral value of Homex common and preferred shares, debentures, notes or other Homex securities of whatsoever kind; (d) persons interested in and otherwise associated with the issuance, purchase and sale of Homex securities including, for example, the SEC, the IRS, HUD, Homex's auditors, bankers (investment and commercial), underwriters, employees, attorneys and agents, etc. Unless the context indicates otherwise, the Government will claim

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that each defendant did the acts only where the direct and circumstantial proof properly admits of such an argument; otherwise the Government will contend that the person personally performing the act did so as part of a criminal venture which counted each defendant as having a stake in its outcome. The following co-conspirators were not identified in the Indictment: S. Ruggiano, R. E. Livingston, P. J. Campbell, W. Konyha, B. A. Frank, Marty Frank, E. E. Jacobs, Jr., M. Marsh, J. J. Catalfano, Frank Csapc, Homex and its subsidiaries, and S. J. Giovino.

2. The defendants fraudulently inflated Homex earnings during all relevant times and, accordingly, its earnings during each and every accounting period from August, 1968, through July, 1972, were overstated by material amounts. Similarly, the defendants fraudulently falsified and concealed adverse information during all relevant times, and, accordingly, after its occurrence, such was not disclosed throughout the period from August, 1968, through July, 1972. The Homex monthly general journal and ledgers have been partially numbered with identification numbers 205,095-930 and 210,961 through 211,064, and some Homex monthly financial statements have been marked as 200,639-201,083 and 202,142-203,999. Homex financial statements filed with the SEC have been marked as Government's Exhibits 1 through 29 as follows:

- GX 1 Registration statement filed 10/1/69 for 825,000 Homex common shares signed by HMY for himself and as agent for DS, WGS and EJS (42477-42516).
- GX 2 Power of Attorney for GX 1 signed by HMY, DS, WGS and EJS (42517-8).
- GX 3 Exhibits to GX 1 filed 10/1/69 (42519).

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- GX 4 Amended registration statement filed 2/17/70 for 1,175,000 Homex common shares signed by HMY for himself and as agent for DS, WGS and EJS (42521-42547).
- GX 5 Effective registration statement filed 2/19/70 for 1,175,000 Homex common shares signed by HMY for himself and as agent for DS, WGS and EJS (42551-42601).
- GX 6 Amended registration statement filed 7/16/71 for 25,000 Homex common shares signed by HMY for himself and as agent for DS, WGS and EJS (42603).
- GX 7 Effective registration statement filed 8/23/71 for 25,000 Homex common shares signed by DS for himself and as agent for WGS, HMY and EJS (42605).
- GX 8 Registration statement filed 4/21/71 for 1,025,000 Homex common shares signed by HMY, DS, WGS and EJS (42978).
- GX 9 Exhibits to GX 8 filed 4/21/71 (42979-43158).
- GX 10 Amended registration statement filed 5/28/71 for 500,000 Homex preferred shares signed by HMY for himself and as agent for DS, WGS and EJS (43161).
- GX 11 Amended registration statement filed 7/16/71 for 500,000 Homex preferred shares signed by HMY for himself and as agent for DS, WGS and EJS (43162).
- GX 12 Effective registration statement filed 7/29/71 for 500,000 Homex preferred share signed by HMY for himself and as agent for DS, WGS and EJS (43168).
- GX 13 Form 9K semi-annual report filed 3/18/70 for the six months ending 1/31/70 (42626-7).
- GX 14 Homex's 1970 proxy filed 1/11/71 (42630).
- GX 15 Form 10K annual report filed 11/30/70 for the year ending 7/31/70 (42632).
- GX 16 Homex's 1971 Proxy filed 10/12/71 (42034).
- GX 17 Form 10K annual report filed 10/27/71 for the year ending 7/31/71 signed by HMY (42636-42673).
- GX 18 Form 10Q Quarterly report filed 3/16/71 for the six months ended 1/31/71 signed by EJS (42684-689).

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- GX 19 Form 8K monthly report filed 3/8/71 for the month of February 1971 (42691-2).
- GX 20 Form 10Q Quarterly Report filed 6/17/71 for the nine months ended 4/30/71 signed by EJS (42694-42700).
- GX 21 Form 8 Amendment to 1971 10K filed 2/10/72 signed by HMY (42703-3).
- GX 22 Form 8K months report filed 9/20/71 for the month of August 1971 (42705-6).
- GX 23 Form 8K monthly report filed 10/14/71 for the month of September 1971 (42708-9).
- GX 24 Form 10Q Quarterly report filed 12/15/71 for the 3 months ended 10/31/71 (42711-715).
- GX 25 Form 10Q Quarterly Report filed 3/16/72 for the six months ended 1/31/72 (42724-731).
- GX 26 Form 8k monthly report filed 5/12/72 for the month of April 1972 (42732-5).
- GX 27 Form 8K monthly report filed 6/12/72 for the month of May 1972 signed by HMY (42735-8).
- GX 28 Form 10Q Quarterly report filed 6/12/72 for the nine months ended 4/30/72 (42740-47).
- GX 29 Form 8K monthly report filed 8/17/72 for month of July 1972 (42749-52).

Each of these account entries and financial statements contains, inter alia, cumulating current and retained earnings and receivables which account for the "sales" transactions identified in the Indictment and subparagraphs (a) through (j) of this Bill of Particulars. The defendants wholly failed to establish the reserves or write-offs necessary to a truthful statement of Homex's financial position. Numerous devices and tricks were employed during each accounting period to improve Homex's financial appearance. Without limiting the generality of the foregoing, the following specifics are herein set forth as some, but not all, of the "sales" transactions involved in the scheme to defraud, together with some, but not all, of the withheld adverse information:

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(a) Fiscal Year Ending 7/31/69

The Homex consolidated financial statements for the fiscal year ending July 31, 1969, which reported total sales of approximately \$10,000,000, materially overstated such sales and the related receivables, as a result of the improper inclusion therein of the following projects:

<u>PROJECT</u>	<u>LOCATION</u>	<u>SALES AMOUNTS</u>
Kece, Ltd.	Clay, N.Y.	\$325,000
Reseac Realty, Inc.	Clay, N.Y.	\$425,000

(b) Fiscal Periods Ending
12/31/69 and 1/31/70

The Homex consolidated financial statements for the five and six months fiscal periods ending 12/31/69 and 1/31/70 which reported total sales of approximately \$7,600,000 and \$10,500,000, respectively, materially overstated such sales as a result of the improper inclusion therein of the Hillwood project in Akron, Ohio.

(c) Fiscal Year Ending 7/31/70

The Homex consolidated financial statements for the fiscal year ending July 31, 1970, which reported total sales of approximately \$22,500,000, materially overstated such sales by approximately \$10,528,000 as a result of the improper inclusion therein of the following projects:

<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNTS</u>
Hillwood Homes	Akron, Ohio	\$5,229,200
Highland Ave.	Akron, Ohio	1,688,000
Pittsburgh St.	Erie, Pa.	339,400
37th & Tuttle	Erie, Pa.	659,000

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Bird and Pearl St.	Erie, Pa.	666,000
Bridgeport St.	Worcester, Mass.	329,500
North St.	Worcester, Mass.	206,650
Providence Rd.	Worcester, Mass.	181,100
Hooper St.	Worcester, Mass.	506,377
Yale St.	Sanford, Maine	843,444

Reported net income before taxes of approximately \$4,350,000 was materially overstated by approximately \$3,005,000 as a result of the improper inclusion in sales of the foregoing projects. In addition, expenses were understated by approximately \$500,000 as a result of the improper omission of installation overrun expenditures from costs of sales.

(d) Fiscal Three Month Period Ending 10/31/70

The Homex consolidated financial statements for the fiscal quarter ended October 31, 1970, which reported modular sales of approximately \$4,800,000, materially overstated such sales as a result of the improper inclusion therein of the following projects:

<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNTS</u>
Clay Phase I	Clay, N.Y.	\$2,821,200
Southbridge	Southbridge, Mass.	595,000
Ithaca I	Ithaca, N.Y.	333,200
Ithaca II	Ithaca, N.Y.	130,900
Grandview	Erie, Pa.	935,000

(e) Fiscal Five Months Period Ending 12/31/70

The Homex consolidated financial statements for the five months period ended December 31, 1970 which reported total sales of approximately \$10,500,000, materially overstated such sales as a result of the improper inclusion therein of the following projects:

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<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNTS</u>
Grandview	Erie, Pa.	\$ 935,000
Southbridge	Southbridge, Mass.	785,000
Progressive	Virgin Islands	4,197,500
Clay Development	Clay, N.Y.	2,380,400
57-31	Clay, N.Y.	2,100,000

(f) Fiscal Six Months Period Ending 1/31/71

The Homex consolidated financial statements for the six months period ended January 31, 1971, which reported total sales of approximately \$16,000,000, materially overstated such sales as a result of the improper inclusion therein of the following projects:

<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNTS</u>
Hillwood Homes	Akron, Ohio	\$1,079,800
Ithaca	Ithaca, N.Y.	721,600
Washington	Washington, D.C.	721,600
Highland Ave.	Akron, Ohio	1,118,000
Grandview	Erie, Pa.	317,600
Greater Gulf	Mississippi	6,786,900
57-31	Clay, N.Y.	2,100,000

(g) Fiscal Seven and Nine Months Periods Ending 2/28/71 and 9/30/71

The Homex consolidated financial statements for the seven month period ended February 28, 1971 materially overstated all of the reported modular sales of approximately \$12,500,000 and \$3,723,000 of installation sales (out of total installation sales of approximately \$5,137,000) and for the nine months period ended April 30, 1971 materially overstated all of the reported modular sales of \$18,183,000 and \$4,656,000 of installation sales (out of total installation sales of approximately

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\$6,386,000) as a result of the improper inclusion of the following projects:

PROJECT	AMOUNTS IMPROPERLY INCLUDED IN			
	February 28, 1971		April 30, 1971	
	Modular Sales	Installation Sales	Modular Sales	Installation Sales
Ithaca, N.Y.	\$ 721,600		\$ 721,600	
Washington, D.C.	678,400		678,400	
Highland Ave.	1,118,000	546,000	1,118,000	546,000
Grandview Blvd.	317,600	198,000	317,600	293,000
Rochester, N.Y.	1,200,400		1,200,400	
Portland, Maine	569,200	214,000	583,600	257,000
Hillwood Homes	86,800	1,502,000	86,800	1,924,000
North St.		274,000		288,000
Providence Rd.		235,000		247,000
Pittsburgh Ave.		105,000		105,000
Bird and Pearl St.		649,000		649,000
Greater Gulf	7,916,000		7,866,00	
Virgin Islands			2,720,000	
R.I.T.			3,006,100	347,000
57-31	2,100,000		2,100,000	

The Homex consolidated statements of income for the seven month period ended February 28, 1971, and for the nine month period ended April 30, 1971, materially understated the cost of goods sold for the February 28, 1971, and April 30, 1971, periods by recording as accounts receivables approximately \$1,000,000 of excess costs incurred in performing the installation portion of certain Turnkey Projects.

The Homex consolidated statements of income for the seven month period ended February 28, 1971, and for the nine month period ended April 30, 1971, materially understated general, administrative and other expenses for the

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February 28, 1971, and April 30, 1971, periods by improperly recording approximately \$832,000 of expenses as an asset (Property Plant and Equipment, under the subheading "Construction in Progress").

Reported consolidated net income before taxes of \$2,021,600 for the seven month period ended February 28, 1971 and net income before taxes of \$3,755,979 for the nine month period ended April 30, 1971 was materially overstated by \$4,986,414 for the February, 1971, period and \$7,329,902 for the April, 1971, period after taking into account only the matters just described.

In sum, while portraying Homex as a company with increasing sales and earnings, the defendants omitted disclosing that most of such sales and the resulting and cumulating accounts receivable were fabricated, that it had exhausted its bank lines of credit, invaded compensating balances, cut module production and payroll expenses and was, in early 1971, in the midst of a serious cash flow crisis.

(h) Fiscal Year Ending July 31, 1971

The Homex consolidated financial statements for the twelve month period ended July 31, 1971, which reported total sales of approximately \$36,800,000, materially overstated such sales as a result of the improper inclusion therein of the following projects:

<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNT</u>
Hillwood	Akron, Ohio	\$2,581,800
Highland	Akron, Ohio	1,664,000
Grandview	Erie, Pa.	502,600

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Ithaca	Ithaca, N.Y.	\$ 833,600
Stanley Simon	N.Y.	6,282,500
Morgentown	W. Va.	2,418,000
Clay	Clay, N.Y.	1,951,000
Greater Gulf	Mississippi	7,866,900
Virgin Islands	Virgin Islands	2,720,000
Rochester	Rochester, N.Y.	1,200,900

The consolidated statement of income for the fiscal year ended July 31, 1971 materially understated:

- (1) Cost of intallation by recording as accounts receivable and other assets approximately \$2,000,000 of excess costs (cost overruns) incurred in performing the installation portion of certain HUD Turnkey Projects; and
- (2) General, administrative and other expenses by recording approximately \$1,000,000 of expenses improperly recorded by Homex as an asset (Property Plant and Equipment, under the sub-heading "Construction in Progress").

Reported income before taxes of \$6,630,663 for the fiscal year ended July 31, 1971 was overstated by approximately \$12,755,665 for said period.

(1) Fiscal Three Months Period Ending 10/31/71

The Homex consolidated financial statements for the three months ended 10/31/71, which reported revenues of approximately \$10,200,000, materially overstated such sales as a result of the improper inclusion therein of the following projects:

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<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNT</u>
Greater Gulf	Mississippi	\$ 447,000
Stanley Simon	New York	5,362,000
Morgantown	West Virginia	173,000
Mallory Tonawanda	Tonawanda, N.Y.	1,968,000

(j) Fiscal Six Months Period Ending 1/31/72

The Homex consolidated financial statements for the six months ended 1/31/72, which reported revenues of approximately \$13,500,000, materially overstated such sales as a result of the improper inclusion therein of the following projects:

<u>PROJECT</u>	<u>LOCATION</u>	<u>AMOUNT</u>
Greater Gulf	Mississippi	\$ 915,000
Mallory Tonawanda	Tonawanda, N.Y.	2,097,000
Jamestown, N.Y.	Jamestown, N.Y.	442,000
Morgantown	Morgantown, W. Va.	173,000
Stanley Simon	New York	5,362,000

3. Some, but not all, of the additional parts or means by which the conspiracy and scheme to defraud was carried out were the following:

(a) In or about 1971, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, and HAROLD M. YANOWITCH, unlawfully, wilfully and knowingly caused the co-conspirator Salvatore J. Giovino to secretly intercept wire and oral communications of Richard G. Levering, then a Homex employee responsible for the dissemination of material corporate information to the financial media, for the purpose of preventing any disclosure of materially adverse corporate information.

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(b) In or about 1971, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, and HAROLD M. YANOWITCH, caused the conspirator Salvatore J. Giovino to electronically "sweep" their homes and offices together with the home and office of Jack Saferstein, an official of Homex's largest customer, for the purpose preventing any disclosure of materially adverse corporate information.

(c) At all relevant times, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBLE L. PHILLIPS employed devices and techniques to suppress and conceal the truth including, for example, but not limited to: (1) the falsification and fabrication of records and documents; (2) the destruction of records and documents; (3) the use of cash in transactions where checks are normally employed; (4) the forgery of signatures; (5) the maintenance of more than one set of books of account for Homex and its subsidiaries; (6) the mass removal of records and documents upon the collapse and bankruptcy of Homex and its subsidiaries, etc.

(d) At all relevant times, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBLE L. PHILLIPS unlawfully, wilfully and knowingly paid and promised to pay things of value to public officials for the purpose of influencing official actions, including, for example, but not limited to, a \$10,000 payment to a United States Senator.

(e) At all relevant times, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, EDWIN J. SCHULZ and RUBLE L. PHILLIPS, unlawfully, wilfully and knowingly, falsified information material to the SEC and

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the performance of its official functions and lawful duties including, for example, but not limited to: (1) making false oral representations to representatives of the SEC; (2) making false written responses to questions posed in SEC letters of comment; (3) for the purpose of obstructing the post-bankruptcy investigations, giving false, evasive or perjurious answers to questions propounded while under oath; (4) making false and misleading statements in registration statements and periodic reports filed with the SEC; (5) deliberately omitting information required to have been filed or otherwise disclosed to the SEC; etc.

(f) At all relevant times, the defendants DAVID STIRLING, JR., WILLIAM G. STIRLING, HAROLD M. YANOWITCH, RUBLE L. PHILLIPS and EDWIN J. SCHULZ, unlawfully, wilfully and knowingly falsified information in Court proceedings including, for example, but not limited to, giving false, evasive or perjurious answers to questions propounded to them in the course of civil, bankruptcy and Grand Jury proceedings and ancillary interviews.

(g) At all relevant times, the defendants HAROLD M. YANOWITCH and RUBLE L. PHILLIPS, wilfully and knowingly falsified information in Federal Communication Commission ("FCC") proceedings including, for example, but not limited to, giving false and misleading statements in application papers filed with the FCC and giving false, evasive and perjurious answers to questions propounded in the course of administrative proceedings relating to said application.

4. On June 3, 1969, a deed was recorded in the Onondaga County Clerk's office, Deed Book 2404, p. 891 et

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seq., from Hollyrood Park II, Inc., a New York corporation and a Homex subsidiary to Kece Associates, Ltd., a New York corporation, transferring several acres of land described as being a section of Farm Lot. No. 75, Belmont Village, Clay, New York. On June 25, 1969, a deed was recorded in the same clerk's office, Deed Book 2406, p. 761 et seq., transferring the same parcel from Kece Associates, Ltd. to Riverbend Estate, Inc. a New York corporation. At all relevant times, Peter Thun controlled Kece Associates, Ltd. and Riverbend Estate, Inc. The purchase price recited on copies of closing statements totaled \$325,000, all of which was then evidenced by various secured and unsecured notes (E.g. 708-710). A purchase money mortgage from Kece Associates, Ltd. to Hollyrood Park II, Inc., in the total sum of \$259,124. 00 was also recorded in the same clerk's office in Deed Book 2408, p. 459-963 on June 3, 1969. The aforementioned closing statements made no references to any representations by Homex or its subsidiaries to Peter Thun, Kece Associates, Ltd. or Riverbend Estates, Inc. and to any collateral relationships between the transfer of the land. For example, a "letter of intent" dated September 4, 1969, signed by the defendant Yanowitch on behalf of Kabeth Properties, Inc. and by Peter Thun on behalf of Riverbend Estates, Inc., describes a proposed future "contract for the design, manufacture and construction of 330 apartments." An apparently earlier, June 4, 1969, version of said letter of intent, addressed to Kece Associates, Ltd., was of the same tenor. Neither document was referred to in the closing statements; nor described or otherwise disclosed in the several Homex registration statements and exhibits thereto. Indeed, if the "agreement...to purchase modular housing" (GX 5, p.9) is

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meant to refer to this letter of intent, then such constitutes a serious overstatement which would mislead and deceive the reader as to the true relationship between the parties. In any event, material aspects of the negotiations preceding the preparation and execution of the aforementioned deeds, notes, mortgages and letters, etc. were not included in said registration statements. Finally, material aspects of the negotiations following the execution of said documents and in consequence of the numerous defaults thereunder were likewise nowhere disclosed to the investing public.

On August 18, 1969, two deeds were recorded in the Onondaga County Clerk's office, Deed Book 2410, pp. 1101-1108, from Hollyrood Park II, Inc. and Elmsite Homes, Inc., both New York corporations and Homex subsidiaries, to Raseac Realty, Inc., a New York corporation transferring several acres of land described as being a portion of Farm Lot. No. 75 in the Town of Clay. Cesare Falcone, Morris J. Shapiro and Don J. Barbato controlled Raseac Associates, Inc. The purchase price recited on one copy of a closing statement, backdated to June 30, 1969, totaled \$425,000, only \$60,000 of which was then paid and \$365,000 being evidenced by various secured and unsecured notes (E.g. 704). A purchase money mortgage from Raseac Realty, Inc. to Hollyrood Park II, Inc. and Elmsite Homes, Inc. in the total sum of \$302,000 was also recorded in the same clerk's office on the same day, Deed Book 2413, pp. 5-8. The aforementioned closing statement made no reference to any representations by Homex or its subsidiaries to Cesare Falcone, Don J. Barbato and Morris J. Shapiro and to any collateral relationships between

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such persons and the transfer of the land. For example, an assignment to Raseac Realty, Inc., dated July 31, 1969, signed by the defendant Yanowitch on behalf of Hollyrood Park II, Inc., describes an option granted to the Gulf Oil Corporation which committed the latter to an exercise payment of \$100,000 for a small portion of the property transferred to Raseac. Neither the assignment nor the underlying option was referred to in the closing statement or otherwise disclosed in the several Homex registration statements and exhibits thereto. Similarly, material aspects of the negotiations preceding the preparation and execution of the aforementioned deeds, notes, mortgages and assignments, etc., were not included in said registration statements. Material aspects of the negotiations following the execution of the said documents and in consequence of the numerous defaults thereunder were likewise nowhere disclosed to the investing public. For example, the 1971 transfer of ownership of Raseac Realty, Inc. to Bernard A. Frank and John Garrity, the defendant YANOWITCH's former law partners, and the attendant promise of increased legal fees to cover their costs was nowhere disclosed.

5. The defendant DAVID STIRLING, JR. signed, purportedly on behalf of Kabeth Properties, Inc., a Homex subsidiary, a document reciting an "Agreement this 23rd day of December 1970" with Route 57 & 31 Development Corp. to sell to it several acres of property in Clay, New York, which was signed on its behalf by one Carmen Grasso, as its President. Thereafter, and also purportedly on behalf of Kabeth Properties, Inc., Ruben K. Davis signed a retyped

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version of said document which was later filed with the SEC as part of GX 9 at pp. 43121 et seq. This document recited a "purchase price" of \$2,100,000. Harold Wynn and William J. Groggs, Jr. controlled the Empire Pipeline Co., a business the income of which in material part had been derived or received from Homex and its affiliates, and, together with Carmen Grasso, controlled Route 57 & 31 Development Corp. The purchase price recited in both of the aforementioned documents totaled \$2,100,000, of which \$210,000 was said to be payable on December 30, 1970 and the balance of \$1,890,000 five years later on December 30, 1975. On or about that date, the sum of \$210,000 was paid from the proceeds of a \$250,000 loan by the First National Bank of Rochester to the Route 57 & 31 Development Corporation. In addition to the borrower's note, the loan was further secured and collateralized by the individual guarantees of Grasso, Groggs and Wynn and by a letter assignment, dated December 30, 1970, and signed by R.K. Davis on behalf of Kabeth Properties, Inc., of the net proceeds of a condemnation award then being prosecuted by Kabeth against the State of New York. Nowhere were these financing circumstances disclosed to the investor. Copies of two additional documents were also filed with the commission as part of GX 9 at pp. 43149-43157; each bearing the purported signatures of R.K. Davis on behalf of Kabeth Properties, Inc. and Messrs. Grasso and Wynn. Material aspects of the discussions preceeding and following the execution of the aforementioned documents were nowhere disclosed to the investing public.

6. On and after the week beginning February 23, 1971, the defendant PHILLIPS procured Kenneth N. Caron's

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signature on behalf of a Mississippi non-profit corporation named the Greater Gulf Coast Housing Development Corporation ("Greater Gulf"), and thereafter the defendant HAROLD M. YANOWITCH's signature on behalf of Homex on a document purporting to have sold on "this 28th day of December, 1970" approximately 800 dwelling units for \$15,000,000. On or about the same time, the defendant PHILLIPS procured the signatures of the same individuals on an additional document purporting to have sold on "this 23rd day of December, 1970," approximately 5,000 dwelling units for \$100,000,000. On or about March 8, 1971, the defendant PHILLIPS signed, on behalf of Homex, a letter to Greater Gulf falsely reciting a December 28, 1970, execution of the aforementioned document and falsely claiming an inadvertent failure to relate the terms thereof to the document purporting to sell approximately 5,000 dwelling units for \$100,000,000 or to have included a provision requiring that the 800 units be manufactured in Harrison County, Mississippi. On or about March 16, 1971, the defendant PHILLIPS signed a letter to Greater Gulf purporting to commit Homex to several additional promises beyond those previously set forth. On or about March 18, 1971, the defendant PHILLIPS procured Kenneth N. Caron's signature on a document purporting to accept with attachments a \$15,000,000 loan from U.S. Shelter Corporation, a Homex subsidiary, and purportedly ratifying the aforementioned PHILLIPS misrepresentations. In or about this same time period, the defendant PHILLIPS procured Kenneth N. Caron's signature on a document accepting a purported \$15,000,000 loan commitment from the Farmers Home

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Administration of the United States Department of Agriculture which in truth and in fact, was a forgery and, which on or about March 19, 1971, the defendant YANOWITCH displayed to Homex's auditors. On or about May 28, 1971, the defendant PHILLIPS signed and procured the signature of another on an exchange of letters for the purpose of defrauding an unidentified governmental official into withdrawing objections to the matter dealt with in said letters. None of the aforementioned documents was made part of Homex's registration statement as an exhibit thereto. More fundamentally, too little of the truth concerning this matter was set forth in any of the successive editions of Homex's registration statements, its periodic reports or its public announcements. Additionally, material aspects of the discussions preceding and following the execution of the aforementioned documents were nowhere disclosed to the investing public.

7. The defendants disseminated fraudulent financial information by filing GX 1 through 29, by the distribution of press releases to the media and by the direct distribution of false data to banks, brokers, etc.

8. The seven officials of the United Brotherhood of Carpenters and Joiners of America and its locals were: S. Ruggiano; R.E. Livingston; P.J. Campbell; W. Konyha; E.E. Jacobs, Jr.; M. March; and J.J. Catalfano. The shares were purchased in or about the spring of 1970 and sold at various times, beginning in the fall of 1970, thereafter through the agencies of individuals too numerous to identify.

9. Each of the defendants used the mails, telephones, telegrams and other interstate communications

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and travel facilities and instrumentalities in carrying out his respective part of the scheme and conspiracy.

10. The registration statement referred to is SEC registration number 2-40122 which became effective on July 29, 1971. It was originally filed on April 21, 1971, as GX 8 together with GX 9, its exhibits. Amendments one through three were filed, with exhibits on May 28, 1971, July 16, 1971 and July 29, 1971, respectively, as GX 10 through GX 12. It failed to properly and truthfully appraise the reader of Homex's business and financial condition with respect to the matters alleged in Count One of the Indictment and, in addition, the matters set forth in paragraphs 1 through 9 of this Bill of Particulars.

11. The "departments and agencies of the United States" include the SEC, the IRS, HUD, the Department of Labor and the agency employing the unidentified official referred to in paragraph 6 of this Bill of Particulars. The gravamen of the conspiracy charge is a conspiracy to commit the substantive offenses charged in the first Eight Counts of the Indictment. In addition to SEC registration statement 2-40122, the defendants also falsified SEC registration statement 2-34949 which was filed on October 1, 1969 (GX 1 and 3) and amended on February 17, 1970 (GX 4), February 19, 1970 (GX 5), July 16, 1971 (GX 6) and August 23, 1971 (GX 7). The Homex annual, quarterly, monthly reports and proxy statements filed with the SEC and alleged to have been deliberately falsified are marked as GX 13 through GX 29. This registration statement and each of these additional reports failed to properly and truthfully appraise the reader of Homex's business and financial condition with

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respect to the matters alleged in Count One of the Indictment, and, in addition, the matters set forth in paragraphs 1 through 9 of this Bill of Particulars.

Dated: New York, New York

September 29, 1976

Yours, etc.

ROBERT B. FISKE, JR.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

v.

DAVID STIRLING, JR., et al.,

Defendants.
-----x

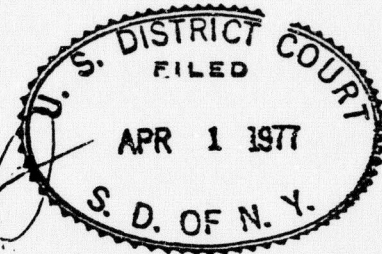
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76 Cr. 685
(MEF)



REQUESTS TO CHARGE ON BEHALF OF
DEFENDANTS DAVID STIRLING, JR.,
WILLIAM G. STIRLING and
HAROLD M. YANOWITCH

SIDNEY FELDSHUB, ESQ.
Attorney for Harold M. Yanowitch

ALBERT J. GAYNOR, ESQ.
Attorney for David Stirling, Jr.
and William G. Stirling

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
v. :
DAVID STIRLING, JR., et al., :
Defendants. :

76 Cr. 685
(MEF)

-----X

REQUESTS TO CHARGE ON BEHALF OF
DEFENDANTS DAVID STIRLING, JR.,
WILLIAM G. STIRLING and
HAROLD M. YANOWITCH

The defendants respectfully request the Court
to include the following in its charge to the jury:

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REQUEST NO. 1

Now, ladies and gentlemen, if you find that the evidence respecting the defendants, or a defendant, is as consistent with innocence as with guilt, such defendant or defendants must and should be acquitted. If you find that the law has not been violated, you should not hesitate for any reason to find a verdict of acquittal.

Adapted from United States v. Witt, 215 F.2d 580, 584 (2d Cir. 1954), cert. denied 348 U.S. 887.

REQUEST NO. 2

No inference whatever is to be drawn from the fact that an indictment was filed against the defendants. The indictment is a mere accusation or charge and it is not to be considered as any evidence of the truth of the charges but merely as a statement of the Government's claim. The defendants in this case, as in all criminal cases, are presumed to be innocent unless proved guilty beyond a reasonable doubt and that presumption of innocence stays with the defendants from the beginning to the end of the trial.

G/S -
not lastREQUEST NO. 3

The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

A reasonable doubt is a doubt based on reason which arises from the evidence or lack of evidence. It is a doubt which a reasonable man or woman might entertain. It is not a fanciful doubt; it is not an imagined doubt; it is not a doubt that a juror might conjure up in order to hasten the bringing in of a verdict. Let me repeat, it is a reasonable doubt.

Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

While bearing in mind that it is rarely possible to prove anything to an absolute certainty, the jury will remember as well that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, your mind is wavering or uncertain to the point where you have a doubt that would cause a prudent person to hesitate before acting in matters of importance to himself or herself; then you have not been convinced beyond a reasonable doubt and you must return a verdict of not guilty.

So, too, if you view the evidence in the case as reasonably permitting either of two conclusions--one of innocence, the other of guilt--you should, of course, adopt the conclusion of innocence, and acquit the defendant because defendant is always presumed innocent unless proven guilty beyond a reasonable doubt.

Adapted from United States v. Davis, 328 F.2d 864,
867 n. 1 (2d Cir. 1964)

The last paragraph adapted from United States v.
Cacchillo, (2d Cir.), Slip Sheet Opinion No. 161,
decided Oct. 7, 1969

Federal Jury Practice Instructions, Mathes, Sec.
8.01, as amended.

REQUEST NO. 4

Nothing that I have said here or during the trial, no question which I have asked, no ruling that I have made, no statement in this charge, is intended in any way as an intimation of what determination of this case I believe you should make.

Remember that in your determination of the facts you rely upon your own recollection of the evidence. What I have said from time to time, or which I may say in this charge, or what counsel have said during the course of the trial or during their summations, is not to be taken in place of your own recollection of the facts or the evidence in this case.

Nor are you to take into account or consider in any respect the rulings made on various motions and objections by counsel. Counsel have the right to object to the introduction into evidence of any testimony or exhibit offered by the opposing party. My rulings, therefore, related solely to matters of law with which you have no concern. You must disregard questions and answers to which objections were made and sustained. Similarly, if after a question was asked and an answer given, the answer was ordered stricken from the record, disregard the answer as well as the question.

You are further instructed that with respect to every situation where testimony has been stricken, the reason

therefor is a matter of law which is of no concern of yours and not for your consideration. Once stricken, such testimony must be disregarded and ignored and the reason for such striking, which is the legal basis for the Court's ruling, should not be discussed among you, nor should you speculate or guess with respect to the basis for such ruling.

Nor are you to draw any conclusions from the fact that the Court asked certain questions. This is solely to elicit facts. Hence, you shall give no greater weight to questions asked by the Court than those asked by the prosecution and defense attorneys.

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REQUEST NO. 5Defendants' Position

You are instructed that the defendants' position is that they were not involved in the conspiracy charged. It is their position that the prosecution witnesses must have falsely testified against them for reasons of their own, such as freedom from imprisonment and ~~from~~ immunity of *a hope of* for prosecution by providing the defendants as a target for prosecution other than themselves.

United States v. Alfonso-Perez, 535 F.2d 1362, 1365
(2d Cir. 1976)

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not "acts"

Requisite Elements to be Proved
to Establish the Offense of the
Conspiracy Charged in the Indictment

Four Essential Elements:

First: That the conspiracy claimed by the Government was wilfully formed and was, in fact, existing at or about the time alleged by the prosecution.

Second: That such defendant or defendants knowingly and wilfully became a member of that conspiracy.

Third: That an act was done by one of the alleged conspirators knowingly and that this particular act is relied on by the prosecution as charged in the indictment.

Fourth: That such act was knowingly done to advance and further the purpose of the conspiracy as the same is charged in the indictment.

Unless you find, beyond a reasonable doubt, from the very evidence in this case and not elsewhere, that the existence of the conspiracy charged in the indictment has been proved beyond a reasonable doubt, even that is not enough. You must also find, beyond a reasonable doubt, that acts were done and knowingly so done by the conspirators in furtherance of some purpose of the conspiracy. Then, and only then, is proof of the conspiracy charged complete and adequate.

If you do not find any one of these elements beyond a reasonable doubt, you need not go any further as to this count and immediately cease your deliberations because such defendant or defendants cannot be a member of a non-existent conspiracy.

The burden is always upon the prosecution to prove, beyond a reasonable doubt, every essential element of the crime charged; the law never imposes upon the defendants the burden or duty of calling any witnesses or producing any evidence in this case.

Therefore, if in any way along this road that I have now described to you, there should be a failure to find the essential element, as I have previously outlined, beyond a reasonable doubt, you need go no further in your deliberations on this count and you are instructed to find a verdict of not guilty on that count.

Conspiracy-- Proof of

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before you may find that such defendant or defendants were or had become a member of a conspiracy, you must find from the evidence, beyond a reasonable doubt, that a conspiracy was knowingly formed and that David Stirling, William Stirling and Harold Yanowitch, who are charged with being members of that conspiracy, wilfully participated in the unlawful plan, with the intent to advance or further the purpose of the conspiracy.

You must find from the evidence, and beyond a reasonable doubt, that David Stirling, William Stirling and Harold Yanowitch acted or participated wilfully and that they participated voluntarily and intentionally and with the specific intent to violate that which the law forbids; that is to say, that David Stirling, William Stirling and Harold Yanowitch acted or participated with the bad purpose to disobey the law; and all of this you must find, beyond

a reasonable doubt, from the evidence. Before you can find that they participated in a conspiracy, you must find that a conspiracy existed and this you must find from the evidence beyond a reasonable doubt. The actions and declarations of all are to be considered. However, in determining whether David Stirling, William Stirling and Harold Yanowitch were members of this conspiracy, if any, you must consider only each one's acts and statements. Thus, if you find first that there was a conspiracy based upon actions and declarations of others than David Stirling, William Stirling and Harold Yanowitch, then you must first consider only David Stirling's, William Stirling's and Harold Yanowitch's acts and statements to determine, beyond a reasonable doubt, that he became a member and participant in that conspiracy.

I charge you that David Stirling, William Stirling and Harold Yanowitch cannot be bound by the acts or declarations of others until it is first established, beyond a reasonable doubt, that a conspiracy existed and then if you so find from the evidence, you must go on and then determine from the evidence that David Stirling, William Stirling and Harold Yanowitch were participants and this you must find beyond a reasonable doubt.

United States v. Edwards, 366 F.2d 853, 867
(2d Cir. 1966), cert. denied 386 U.S. 908,
87 S.Ct. 852, 17 L.Ed.2d 782 (1967).

United States v. Kahn, 366 F.2d 259 (2d Cir.),
cert. denied 385 U.S. 948, 87 S.Ct. 324
17 L.Ed.2d 26.

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The mere fact that a witness is called by the Government or is employed by the United States Government does not entitle such witness's testimony to more weight or credence than that of any other witness's testimony.

G/S but
add

There has been testimony as to the good character of the defendants. You should consider such evidence of good character, together with all the other facts and all the other evidence, in determining the guilt or innocence of the defendants.

I charge you that evidence of good character may, in itself, create a reasonable doubt when, without such evidence, no reasonable doubt would exist.

United States v. Minieri, 303 F.2d 550, 555
(2d Cir. 1962).

The Burden of Proof on the Prosecution

The burden of proving every fact material and necessary to a conviction by competent evidence beyond a reasonable doubt is on the Prosecution and does not at any time or under any circumstances shift from the Prosecution. It is not sufficient for the Prosecution to prove any material fact either by guess or speculation, or conjecture, suspicion, or by a preponderance of the evidence, or only to the extent that the evidence pertaining to such fact is evenly balanced, or uncertain, or is as consistent with guilt as with innocence.

The law does not impose upon a defendant the duty of producing evidence on any issue and a defendant has the right to rely upon a failure of the Prosecution to establish beyond a reasonable doubt any essential element of the offense charged, if such failure in fact be found by the jury, as to any particular count or counts.

REQUEST NO. 11CREDIBILITY OF A WITNESS TESTIFYING FALSELY

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or judgment.

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements which are inconsistent with the witness's present testimony. If you believe that any witness has been impeached, thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

Adapted from the charge of the Honorable
Richard H. Levet in United States v.
Tufaro, Appellant's Appendix pp. 37a-38a,
Aff'd per curiam, 316 F.2d 240 (2d Cir.),
cert. denied, 375 U.S. 832 (1963).

REQUEST NO. 13Testimony of an Alleged Accomplice

I charge you that you should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that unsupported testimony beyond a reasonable doubt. In this connection, you are to consider those areas of the testimony wherein witnesses sought, by oral declarations, to include such defendant or defendants as a participant in an alleged conspiracy and in alleged violations of the securities laws.

REQUEST NO. 14

1st is already
given, rest
unnecessary

From time to time, conferences at the Bench out of your hearing were conducted at the request of the attorneys for the Government and for the defense. These were conferences solely on questions of law which it is my duty to decide. You are not to draw any inferences against either side to this controversy for requesting such conferences, because an attorney would be remiss in his duty to his client if he did not protect his interests in the manner provided by law which it is my function to decide.

A preliminary word as to what this case is not about. It has nothing to do with the civil liability of any investor. This is a criminal case. Its object is to secure the enforcement of criminal sanctions set up by Congress when it is charged one has wilfully employed a device, scheme and artifice to defraud purchasers and prospective purchasers of securities.

There is a distinction between civil liability imposed upon a defendant and a criminal responsibility for his acts and conduct.

Therefore, we are not concerned with civil liability, where the burden of proof is less, but with criminal sanctions where the proof must be beyond a reasonable doubt.

The civil liability, if any, will not be determined by you in deciding the fact issues in this case.

Adapted from Charge of Hon. Edward Weinfield in United States v. Rifkin, 68 Cr. 261, Tr. 1338-1339, aff'd 451 F.2d 1149 (2d Cir. 1971)

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vague

REQUEST NO. 15

If you find that the fraud was not committed in 1971 but find it may have been committed in 1970, I instruct you that you must acquit the defendant of the charges in this case.

See United States v. Alfonso-Perez,
535 F.2d 1362, 1364 (2d Cir. 1976).

In the indictment it is asserted that the different defendants employed a single scheme to defraud purchasers. To show participation in that scheme, the Government must prove beyond a reasonable doubt that a defendant was a party to the same scheme alleged in the indictment. It is not sufficient if the Government prove that a defendant was a party to a scheme which was separate and distinct from that alleged in the indictment.

REQUEST NO. 17

If you determine that the particular statement is a statement of fact instead of an honest, permissible opinion or prediction, and you further determine that the statement was false or misleading at the time it was made, you are then faced with another important problem concerning the nature of the statement. That problem is whether the fact misstated or omitted was a "material" fact under the circumstances. The law does not require a person selling stock to state every fact about the stock which a prospective purchaser might like to know and that might, if known, tend to influence his decision. In regard to omissions, the law requires only that omissions not be made of facts which are essential in order to make the statement made not misleading. For instance, even if you find that a particular statement of fact is plainly untruthful, you must also find that the fact misstated was so important that it could reasonably be expected to induce a person to act or not to act, and in this case to purchase or not to purchase Stirling Homex Company securities, before you may even consider whether the statement was fraudulent.

The law is concerned only with omissions of facts which are essential to make the statement made not misleading and with misstatements of facts which are important enough to induce a person to invest or not to invest. And

it is only the omission or misstatement of such important facts upon which you may judge whether the defendant responsible should be convicted of criminal fraud.

REQUEST NO. 18

6/5 to extend it goes.
Go on to cover omissions
creating something not
known to be

A "scheme" may be said to be a design or plan formed to accomplish some purpose. An "artifice" may be said to be an ingenious contrivance or device of some kind, and when used in a bad sense the word corresponds with "trick" or "fraud." Hence, a "scheme" or "artifice" to defraud, within the meaning of the statute would be to form some plan or devise some trick to obtain money or property by means of fraudulent misrepresentations. A "fraudulent misrepresentation" as used in this connection means a representation that an existing fact is true, it being known to the person making said representation that the facts represented to exist do not in fact exist and that said representation is false. A fraudulent misrepresentation may be said to be the intentional misstatement of a person as to the truth of an existing fact, it being then known to the person making said statements that the facts represented to be true are false.

true or
false

REQUEST NO. 19

Even though some individual lost money by the transactions shown in evidence, it would not constitute a scheme to defraud unless it was designed and intended by a defendant that he should so lose money and should be so injured by the plan which was carried into effect.

A fraudulent intent is necessary to sustain a charge of a scheme to defraud. An untrue statement or a representation which is in fact false only amounts to fraud if the defendant making it knew the statement to be untrue or the representations to be false and if he made the statement or representations with intent to defraud.

REQUEST NO. 20

A man may be visionary in his plans and believe they will succeed, and yet, in spite of their ultimate failure, be incapable of committing conscious fraud. Human credulity may include among its victims even the supposed imposter.

Under our system of laws men are not punished criminally for mere mistakes, mere mismanagement, mere carelessness, or mere errors of judgment. They are punished only for intentional wrongdoing. The defendants here are not on trial for errors of judgment or mistakes or mismanagement, but are on trial for a criminal offense, and an essential element of that offense is an evil or criminal intent, which it is incumbent upon the Government to prove to your satisfaction and beyond a reasonable doubt before you will be warranted in returning a verdict of guilty.

REQUEST NO. 21

*including 2 - victims,
argumentative - will
cover substance of good vs.
bad faith*

Even if you can determine, beyond any reasonable doubt, that there were false statements of material facts or omissions of material facts which rendered statements misleading, and even if you are convinced that interstate facilities were used in the way described, you must declare any defendant innocent of the charge of criminal fraud unless you can resolve three other questions against him. And those questions are the most crucial and most difficult ones, because they involve a conclusion with regard to the individual defendant's intentions and his state of mind.

The first issue is to determine which defendant, if any, is responsible for the statement in question. If a defendant did not actually make the misrepresentation himself, he cannot be held responsible for it. D

Assuming that you do conclude that a defendant did make, and was responsible for, a misrepresentation of a fact material to the investment decision, then you are faced with the second problem involved in evaluating the guilt or innocence of a person charged with criminal fraud. That is whether the defendant had actual, personal knowledge that the statement was false or misleading when made. Criminal fraud is never committed when honestly held beliefs which are communicated to others turn out to be unwise, mistaken, or erroneous. If the defendant sincerely believed what he

was saying at the time he said it, you may not convict him of criminal fraud, no matter how false or misleading the prosecution shows his statements to have been in retrospect.

In deciding whether a defendant responsible for misrepresentations knew that they were false or misleading at the time they were made, you must rely on evidence of the facts surrounding the particular transaction concerned, since you cannot look directly into his mind. It is appropriate for you to consider the extent of his knowledge of the conditions of the company, particularly those conditions which may change from day to day. For this purpose you should look beyond the title which he may have had as an officer of the company and try to determine what he actually knew about the relevant operations of Stirling Homex Corp. You should ask yourself whether it would be likely that he would have personal knowledge of the fact he related or whether it was more likely that he obtained his information second-hand in reliance on the statements and opinions of others who were closer to the pertinent affairs of the company. For example, even if you find that a financial statement which a defendant mailed, or caused to be mailed, was false as charged, if you find that the defendant relied in good faith on the expertise of the accountant who furnished the statement and that he therefore personally believed the statement to be truthful, you must acquit the defendant charged with fraud in that instance.

For the purpose of the charge of criminal fraud it is not enough if the defendant was merely careless in relying on the rumors, statements, or opinions voiced by others, so long as he had no personal knowledge that they were false and related them to other people in good faith. A false or misleading statement of fact may easily be the result of an honest mistake. Perhaps the defendant did not know the true facts; perhaps he relied on false or misleading information given to him by others; or perhaps he was careless, over-enthusiastic, or unrealistic in stating his own hopes for the company. If, after all the testimony, you find that you have a reasonable doubt that a particular defendant had actual knowledge that the misrepresentations for which he was responsible were false or misleading, and you feel that instead he was simply mistaken or careless, you must find him innocent of the charge of criminal fraud in that instance.

You may be faced with a third problem to resolve in determining the guilt or innocence of an individual defendant on the charge of criminal fraud. For even if you are able to conclude, beyond a reasonable doubt, that a defendant who is responsible for certain misrepresentations of material fact had personal knowledge that what he was saying was false or misleading, you still may not convict him of criminal fraud unless you are able to conclude that he had the specific intention to deceive and defraud the person to

whom the statements were made. You may recall that it is only the wilful violation of the anti-fraud statute I read to you earlier which is made a crime. And it is the element of evil purpose, criminal intent, or wilfulness which distinguishes the criminal fraud charged here from less serious types of misrepresentation for which the law provides less harsh remedies for those who are wronged.

In determining whether a particular defendant acted with evil purpose and wilfully sought to defraud other people when he misrepresented a material fact, you must consider a defendant's state of mind. You should consider, for instance, whether the defendant personally knew the true facts concerning the particular transaction or fact which the prosecution claims he had misrepresented, or whether he had instead relied in good faith on others for the information, as we discussed earlier. So, too, you should consider the evidence of a defendant's character in order to determine if he had the required criminal intent to defraud investors of Stirling Homex, as the prosecution claims. For instance, if the age, background, and experience of a defendant create a reasonable doubt in your mind that he would wilfully, and with full knowledge, act to deceive investors of Stirling Homex Company, then you must find that defendant innocent of the charge of fraud because of that doubt.

See *Walters v. United States*, 256 F.2d 840 (9th Cir. 1958, cert. den. 358 U.S. 833, 79 S.Ct. 54, 3 L.Ed.2d 70 (1958)); *Frank v. United States*, 220 F.2d 559, 565

(10th Cir. 1955); United States v. Vasen, 222 F.2d
3, 7 (7th Cir. 1955); cert. den. 350 U.S. 834,
76 S.Ct. 70, 100 L.Ed. 744 (1955).

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Now, before getting to the charges at hand, I want to emphasize to you, and I will emphasize this again, that in your deliberations it is your duty to give careful separate consideration to the cases of each defendant. As I am sure you all understand, guilt is a very personal thing, and though this was a joint trial, you will understand the force and significance of treating each defendant separately and scrupulously so and weighing the evidence which relates directly to him in the main before you make any determination of guilt or innocence.

Each defendant is entitled under our system to have the case determined basically on evidence of his own acts and statements, that is to say, evidence directly showing what he said or what he did or what he did not do.

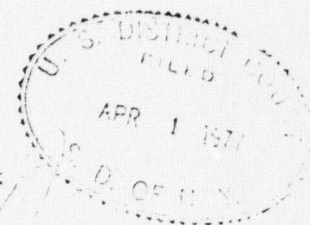
Adapted from the charge of Judge Tyler
in United States v. Stoller, 74 Cr. 159
(S.D.N.Y. 1974), Trial Tr. at p. 3506.

Respectfully submitted,

SIDNEY FELDSHUH, ESQ.
Attorney for Harold M. Yanowitch

ALBERT J. GAYNOR, ESQ.
Attorney for David Stirling, Jr.
and William G. Stirling

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- against -

DAVID STIRLING, JR., et al.,

Defendants.

: 76 Cr. 695 (UNIT)
: NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that, upon all the prior proceedings had herein, the defendant Edwin J. Schulz will move, at such time as the Court may direct, at Room 1106, United States Courthouse, Foley Square, New York, New York, for the following relief:

(1) Pursuant to the procedure recommended by United States v. Natelli, 527 F.2d 311, 327, 328 (2d Cir. 1975), cert. denied, 96 S.Ct. 1663 (1976), separate dismissals of the following specifications for insufficiency of evidence, and withdrawal of the following specifications from jury consideration:

(a) Paragraphs ^{and 11} 10 of Count One, and the same specification insofar as it is incorporated in all the other counts;

(b) Paragraph 12 of Count One, and the same specification insofar as it is incorporated in all the other counts;

(c) Paragraph 13 of Count One, and the same specification insofar as it is incorporated in all the other counts (dismissal of this specification is sought for the additional reasons that the evidence shows the alleged representation to be true, and that all of the words in Paragraph 13 after the word "because" are a non sequitur);

(d) Paragraph 14 of Count One, and the same specification insofar as it is incorporated in all the other counts;

(e) Clause (b) of Paragraph 15 of Count One, and the same specification insofar as it is incorporated in the other counts;

(f) Clause (c) of Paragraph 15 of Count One, and the same specification insofar as it is incorporated in the other counts; and

(g) Paragraph 2 of Count Nine.

(2) A separate judgment of acquittal on each count because of the statute of limitations, since the evidence is insufficient to establish that Mr. Schulz committed any crime which continued beyond July 27, 1971.

(3) A separate judgment of acquittal on each count because of lack of venue, since the evidence is insufficient to establish that Mr. Schulz committed any crime in the Southern District of New York.

(4) In view of the testimony of Messrs. Garson, Kesel, Mauriello and Murray, and the anticipated testimony of Mr. Woods (see page 99 of his grand jury testimony, annexed to this Notice), an order admitting into evidence certain excerpts of Mr. Schulz' prior testimony (annexed to his previous Notice of Motion dated December 20, 1976) on Mr. Schulz' defense case, on the condition that the Government will not be allowed to introduce the four questions on page 22 of Mr. Schulz' grand jury testimony unless Mr. Schulz takes the stand.

Dated: New York, New York
January 17, 1977

Yours, etc.,

Douglas F. Eaton

DOUGLAS F. EATON
745 Fifth Avenue
New York, New York 10022
759-1919
Attorney for Defendant
Edwin J. Schulz

A 150c

TO:

Hon. Robert B. Fiske, Jr.
United States Attorney
One St. Andrew's Plaza
New York, New York 10007

Attention: W. Cullen MacDonald, Esq.

Albert J. Gaynor, Esq.
202 Mamaroneck Avenue
White Plains, New York 10601

Sidney Feldshuh, Esq.
919 Third Avenue
New York, New York 10022

Michael B. Mukasey, Esq.
Patterson, Belknap & Webb
30 Rockefeller Plaza
New York, New York 10020

9

Q Now, you're not sure if it was in this initial conversation, not from Mr. [redacted], or maybe it was his recollection?

A Well, I just have a vague recollection. It was some point or another, and I don't know if it was in this initial conversation or the initial couple of conversations with Don Kesel or not. I have a vague recollection that Kesel did indicate at one time that there were certain entries he had just received the entry form from Bartlett or other people upstairs and been told to book the entries.

Q I can't say whether it was related specifically to this or not, or whether it was related to this initial conversation.

Q You do have a recollection, don't you, of discussing with Schultz in or about June or the first couple of days of July, 1973, the practice that Schultz believed was appropriate of selecting job for inclusion in sales at the close of a quarter in light of the status of the various possible projects to which modules might be assigned from finished goods inventory, or not assigned as he, Schultz, saw fit.

A I think it was the first period of time, yes, but I was not the one who was making the decision.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,

:

Plaintiff,

:

- against -

:

76 Cr. 685 (MEF)

DAVID STIRLING, JR., WILLIAM G.
STIRLING, HAROLD M. YANOWITCH, EDWIN
J. SCHULTZ, and RUBEL L. PHILLIPS,

:

:

Defendants. :

----- x

PROPOSED CHARGE, BASED ON THE HOLDING OF
UNITED STATES v. NATELLI, 527 F.2d 311
(2nd Cir. 1975), cert. denied, 425 U.S.
934 (1976), SUBMITTED BY THE DEFENDANT
RUBEL L. PHILLIPS AT THE DIRECTION OF THE
COURT

The defendant Rubel L. Phillips respectfully requests
the Court to include the following in its charge to the jury:

As I have already instructed you, guilt is personal.
Therefore, you may not convict any defendant until you find,
beyond a reasonable doubt, that he committed the acts charged in
the indictment. Now, in connection with this, I want to point
out some matters relating to the evidence introduced as to the
defendant Rubel L. Phillips.

The Government's evidence as to Mr. Phillips has been
limited to evidence of his involvement in the transactions between
Stirling Homex and Greater Gulf. There has been no evidence

linking him to the other alleged illegal transactions as to which the Government has offered proof. Therefore, in order for you to convict Mr. Phillips, you must find that he intentionally, willfully and knowingly engaged in illegal acts in connection with the Greater Gulf transaction, for the purpose of defrauding the investing public. If you do not find this beyond a reasonable doubt, I instruct you that you must acquit Mr. Phillips on all charges.

The evidence of Mr. Phillips' involvement in the Greater Gulf deal has principally been evidence of: First, his alleged participation in the forgery of a letter from the Farmers Home Administration to Greater Gulf; and Second, his part in securing certain contracts between Greater Gulf and Homex, and between Greater Gulf and U. S. Shelter, the financing subsidiary of Homex, and various assignments under those contracts, as well as confirmations of those contracts.

As to the forgery, the evidence is in the form of an alleged admission by Phillips to Mr. Richardson, the purported author of the letter. This admission has been testified to by Mr. Richardson. Mr. Dean has also testified that Mr. Richardson told him of this alleged statement by Mr. Phillips, but he also testified that, on another occasion, after the date of Mr. Phillips' alleged confession to Mr. Richardson, Mr. Richardson told

Mr. Dean he did not know who was responsible for signing his name to the letter.

Essentially, the issue is whether you believe the testimony of Mr. Richardson. If you do, then you may find that Mr. Phillips in fact forged this letter. If you do not, you may not so find.

As to the circumstances surrounding the securing and dating of contracts, assignments and confirmations, the Government contends that these transactions were so irregular as to show fraudulent intent on their face. Mr. Phillips contends in substance that he had a good-faith belief that these practices were not inspired by fraudulent motives. I instruct you that the evidence of Mr. Phillips' actions in regard to these contracts, assignments and confirmations, standing alone, is not enough to justify a verdict of guilty. In order for these acts, if you find one or more of them to have occurred, to be criminal, you must find beyond a reasonable doubt that Mr. Phillips did them with the intent to defraud the investing public. That is, even if you think that any of these practices were improper, the Government has not sustained its burden of proof as to the criminality of it unless you also find that Mr. Phillips either engaged in it knowing it to be wrong and as a part of a fraud on the investing public, or that that result was so obvious that his behavior amounts to a willful closing of his eyes to it.

In order to find that Mr. Phillips engaged in any of these charged acts--the forgery or one or more of the other transactions--you must agree unanimously, and beyond a reasonable doubt, that he engaged in that particular act. That is, in order to convict on the basis that he engaged in the forgery, all twelve of you must so find. Similarly, as to the other transactions, in order to convict you must find unanimously that he engaged in fraud with respect to a particular transaction. It is not sufficient to convict if some of you find he engaged in the forgery, and the rest find that he engaged in some or all of the other transactions with fraudulent intent. Rather, in order to convict him, you must agree unanimously that he engaged in at least one of these acts--either the forgery, or one or more of the specific acts of alleged securing of contracts, assignments, and so on, as to which the Government has introduced evidence--and that he engaged in such act or acts with fraudulent intent, as I have described such intent to you.

I reiterate, then, that the Government has introduced no evidence that Mr. Phillips was involved in or aware of any of the alleged fraud schemes alleged in the indictment, except the alleged scheme related to Greater Gulf. I instruct you, therefore, that before you may consider the evidence of any of the schemes other than the Greater Gulf scheme against Mr. Phillips, you must find two things: First, you must find that Mr. Phillips was involved in a conspiracy to defraud the investing

public through the Greater Gulf scheme; and second, that this Greater Gulf scheme was part of a single overall conspiracy to defraud the investing public, which conspiracy encompassed the other schemes charged in the indictment.

In this connection, I instruct you that there has been no evidence that Mr. Phillips had any connection with the preparation of Stirling Homex financial statements or SEC filings, except for the separate rider to Exhibit 802 relating to the Mississippi transaction--as to which there is no claim of falsity. Therefore, in order to find Mr. Phillips guilty of a crime in connection with the Stirling Homex financial statements, you must find first that he was a member of a conspiracy or common scheme to defraud the investing public with relation to Stirling Homex shares, and that false financial statements were issued to the public by Stirling Homes in furtherance of this conspiracy.

Dated: New York, New York
January 19, 1977

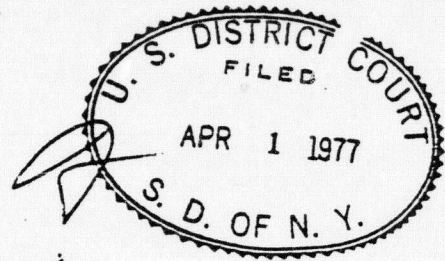
Respectfully submitted,

PATTERSON, BELKNAP & WEBB
Attorneys for defendant
Rubel L. Phillips
30 Rockefeller Plaza
New York, New York
Telephone: (212) 541-4000

Of Counsel:

Michael B. Mukasey
W. Peter Burns

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA :

- v - :

DAVID STIRLING, JR. et al., :

Defendant. :

76 Cr. 685 (MEF)

-----X
ANSWER OF THE UNITED STATES
TO DEFENDANTS' NATELLI MOTIONS

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

W. CULLEN MacDONALD
ANGUS MacBETH
Assistant United States Attorneys

- Of Counsel -

75

WCM:jm
1-1156

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

-v- :

76 Cr. 685 (MEF)

DAVID STIRLING, JR. et al, :

Defendants. :

-----x
ANSWER OF THE UNITED STATES
TO DEFENDANTS' NATELLI
MOTIONS

Defendants have moved the Court to instruct the jury that certain paragraphs of Count One of the indictment have been withdrawn from their consideration in that count and in all other counts in which those paragraphs are incorporated and for a charge that the jury must be unanimous in deciding that a defendant was guilty of the charges in one or more particular paragraph or "specification" of the count being considered in order to convict the defendant upon that count. Defendants claim that different paragraphs of Count One should be withdrawn as to each of them depending upon the facts shown by the Government's case. The authority cited for these contentions is United States v. Natelli, 527 F.2d 311 (2d Cir. 1975), cert. denied, 425 U.S. 934 (1976).

WGM:jm
1-1156

The defendants do not argue the facts of the case in their submission to the Court. The Government contends that the evidence supports each paragraph of Count One of the indictment so that assuming, arguendo, that each paragraph is to be considered separately, each paragraph should go to the jury on the facts. The Government is prepared to support this position through oral argument.

ARGUMENT

The charges in the Natelli trial differ in essential respects from those in this case. Natelli and his co-defendant Scansaroli were tried on a single count which alleged violation of 15 U.S.C. §§78ff and 78n, in that they made or caused to be made false and misleading statements as to material facts in a proxy statement filed with the S.E.C. There was no conspiracy count in the indictment against them and no count charging a scheme or artifice to defraud. There was no instruction requested or given charging a joint venture or scheme. In fact Judge Tyler gave only a minimal charge on aiding and abetting:

"If... you find that the defendant in question knew that the false or misleading data of a material kind were being placed in a proxy statement and then knowingly and intentionally did something to assist in this course of action you should find the defendant guilty."
Trial Tr. 2371.

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1-1156

The count on which Natelli and Scansaroli were tried contained two specifications of false and misleading statements in the proxy statement. While the jury was charged that it must be unanimous as to the count it was not charged that it had to be unanimous as to the specification. In reversing the Court of Appeals ruled:

"When there is more than one specification as a predicate for guilt, each dependant on particular evidence which is unrelated to the other, it would be sound practice to instruct the jury that they must be unanimous on a particular specification to convict. Since that was not done here and since we have found that Scansaroli was not culpable on [one] specification, ...we must reverse the conviction and remand for trial on [the other] specification alone."
At 325.*

In the present indictment Counts One and Three

* Natelli directly holds that it is not error not to give a charge explicitly requiring unanimity on the specifications of a count:

"We do not say it would be wrong for a trial judge to give the charge requested, but it is not error to refuse it. And we do not change that rule." At 325. (Footnote citing Unites States v. Remington, 191 F.2d 246, 250 (2d Cir. 1951), omitted).

WCM:jm
1-1156

through Eight charge a scheme and artifice to defraud and Count Nine charges a conspiracy. Only Count Two charging untrue statements of fact in the registration statement is in any way parallel to the charge in Natelli. Even in Count Two the parallel is far from complete. In this case the incorporation of the paragraph of Count One into Count Two bring into Count Two the unified scheme of the fraud and is ~~this~~ unlike the disparate and seperable false statements charged in Natelli.

It is unquestionable that the crime in a conspiracy charge is the agreement. The jurors must be unanimous in deciding that the defendant under consideration entered the conspiratorial agreement. When the jury is properly instructed as to the nature of the agreement which must be shown, and an overt act is proven, it is not necessary for the Government to prove more. The Government need not specify the particular means by which the agreement was carried out or demonstrate that all the defendants agreed on particular means and methods of the conspiracy.

United States v. Finkelstein, 526 F.2d.517 (2d Cir.1975); United States v. Gersh, 328 F.2d 460, 462 (2d Cir), cert. denied, 377 U.S. 992 (1964). The opinions of individual jurors as to matters which are not essential to the proof of the crime are of no matter.

Analogously, in the counts charging a scheme or

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artifice to defraud the Government must only prove, on the basis of the evidence against a defendant taken as a whole, that he devised or intended to devise such a scheme or artifice. Under a proper charge, the jurors must agree that the totality of the evidence in the case supports the decision that the defendant being considered devised or intended to devise the scheme. It is not necessary for the jurors' minds to meet on more than that and if different jurors gave different weight to various parts of the evidence that it is irrelevant to the unanimity of their verdict, so long as they agree on the essential elements of the crime.

For example, the indictment for a bank robbery conspiracy may charge that defendant A and B entered the bank, B and C drove the get-away cars and A and C later possessed the stolen funds with each event set out as a means to the conspiratorial end. The evidence may come in through photographs and a variety of eye witnesses and circumstantial evidence as to possession of bait money. The jurors may give differing weight to different parts of the evidence but so long as all agree beyond a reasonable doubt that each defendant engaged in robbing the bank it does not matter that some are not persuaded beyond a reasonable doubt by bank photos while others place little weight on eye witnesses

or the accuracy of bank records as to bait money. The jury decides the ultimate facts and is not invited to decide more. Where, as here, the acts charged are part of a single unitary scheme only a general verdict is proper. On a count ¹fully given to the jury, passing beyond the general verdict of guilty or not guilty amounts to a request for a special verdict which is improper and erroneous. United States v. Adcock, 447 F.2d 1337 (2d Cir.) cert. denied, 404 U.S. 939 (1971); United States v. Spock, 416 F.2d 165, 180-183 (1st Cir. 1969).

In addition, under Pinkerton v. United States, 328 U.S. 640 (1946), a defendant convicted of conspiracy may be found guilty of the crimes of co-conspirators committed in furtherance of the conspiracy. Thus in the present case a defendant convicted on the conspiracy count could be convicted on any other count if the jury found either that he had committed it himself or that another defendant committed it in furtherance of the conspiracy. The Government has already requested the Court to charge the jury under the principles of Pinkerton (Request No. 23). Withdrawal of particular paragraphs from jury consideration requiring unanimity as to individual paragraphs on Counts One and Three through Nine would be improper.

Turning to Count Two, the Government contends

that the requirements of Natelli are met if a Pinkerton charge is given and the jury is additionally instructed that where it finds a defendant guilty directly of the substantive crime and not under the principles of Pinkerton it must ^{be} unanimous as to at least one untrue statement of material fact specified in Count One and incorporated into Count Two.

Taking the nature of the indictment in this case, there is no ~~1~~ basis under Natelli to require unanimity of the jurors as to particular paragraphs of Count One as they appear in that Count or in Counts Three through Nine. Considering both the principles of Pinkerton and the evidence of the case, there is no basis to withdraw from the jury's consideration any of the charges of untrue statements of material fact on which Count Two rests. Under Natelli there is ground to instruct the jury under Pinkerton and to charge that in reaching a guilty verdict for the direct substantive violation of Count Two, the jurors must be unanimous as to the guilt of the defendant

WCM:jm
1-1156

being considered on at least one of the specified untrue statements incorporated into that Count. Suggested instructions on this issue are attached.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

W. CULLEN MacDONALD
ANGUS MacBETH
Assistant United States Attorneys

- Of Counsel -

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Supplemental Request No. 1

Unanimity As To Count Two

Count Two charges that the defendants made untrue statements of material facts in the registration statement filed by Stirling Homex or omitted to state material facts in the registration statement necessary to make the statements therein not misleading. Count Two incorporates the allegations of Count One. Paragraphs 10 through 17 of Count One specify separate false or misleading statements included in the registration statement. Before you may convict a defendant of directly committing this crime you must unanimously agree the defendant under consideration made or caused to be made at least one particular statement or omission specified in paragraphs 10 through 17 of Count One. In other words, if nine of you believe the defendant guilty of making a false or misleading statement set out in one paragraph and the remaining three hold him guilty of making a false statement in another paragraph you may not return a guilty verdict by adding your votes on the two paragraphs together; you must be unanimous as to at least one paragraph or specified false or misleading statement.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEB - 4 1977

S. D. C. N. Y.

UNITED STATES OF AMERICA,

-against-

DAVID STIRLING, et al.,

Defendants.

NOTICE OF MOTION

76 Cr. 685 (MEF)

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of ALBERT J. GAYNOR, sworn to on February 3, 1977, the Indictment, trial and all the proceedings heretofore had herein, the defendant, WILLIAM G. STIRLING, will move before the Honorable Marvin E. Frankel, United States District Judge, in Chambers, United States Courthouse, Foley Square, New York, New York, on a day to be set by the Court for a Judgment of Acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure and for such other and further relief as to the Court may seem proper.

Dated: New York, N.Y.
February 3, 1977.

Yours, etc.

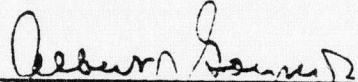
TO:

ROBERT B. FISKE, JR.
United States Attorney for
the Southern District of
New York
1 St. Andrew's Plaza
New York, N.Y. 10007
Att: Angus MacBeth, Esq.
Assist. U.S. Attorney

Douglas F. Eaton, Esq.
Suite 1909-745 Fifth Avenue
New York, N.Y. 10022

Patterson, Belknap & Webb, Esqs.
30 Rockefeller Plaza, N.Y. 10020
Att: Michael Mukasey, Esq.

SIDNEY FELDSHUH, ESQ.
919 Third Avenue, N.Y. 10022


ALBERT J. GAYNOR
Attorney for defendant,
WILLIAM G. STIRLING
202 Mamaroneck Avenue
White Plains, N.Y. 10601
914-761-2399

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

DAVID STIRLING, et al.

Defendants.

AFFIDAVIT

76 Cr.685 (MEF)

State of New York }
County of New York)ss:

ALBERT J. GAYNOR, being duly sworn, deposes
and says:

1. I am the attorney for the defendant,
William G. Stirling (hereinafter, referred to as the "defendant")
and as such, am fully familiar with all of the facts in the
above-entitled case.

2. I make this affidavit in support of the
defendant's motion for a judgment of acquittal after the jury's
verdict pursuant to Rule 29 of the Federal Rules of Criminal
Procedure.

3. The trial of this case concluded on
January 29, 1977 by the return of the jury's verdict of guilty
on all counts of the Indictment against the defendant and
others. This motion is made within seven (7) days after the
jury was discharged and is, therefore, timely made.

4. During the trial, a motion for judgment
of acquittal was made on behalf of the defendant at the con-
clusion of the Government's case and again at the conclusion
of the entire case. Both motions were denied by the Court.

5. While I do not have the transcript of the trial, a review of my trial notes indicates to me that six of the forty-one (41) Government witnesses offered some testimony against the defendant. In substance, the testimony recited that 1) the defendant's approval was required before corporate press releases were issued, 2) the defendant was present at the home of David Stirling, Jr., when William McCann brought a cigar box containing check skirts to David Stirling, Jr., 3) the defendant was present during some general meetings wherein adjustments were discussed with Paul Kuvecke, 4) the defendant was on a distribution list for various internal memoranda and 5) the defendant had a brief hallway encounter with one labor official in which the latter's purchase of corporate stock was mentioned. In addition, the exhibits show that the defendant signed two S-1 documents and an annual report as well as some other documents including the guarantee letter to William Shea.

6. The defendant did not testify in his own behalf.

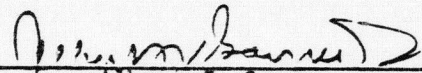
7. Defendant, David Stirling, Jr., testified that the defendant was principally occupied with the production and installation of modules and that he followed the instructions of David Stirling, Jr., concerning the signing of corporate documents and performing his other functions.

8. The evidence against the defendant is insufficient to sustain a conviction for the crimes charged in the Indictment.

WHEREFORE, it is respectfully submitted that for the reasons stated above, a Judgment of Acquittal should be entered on behalf of the defendant, William G. Stirling.

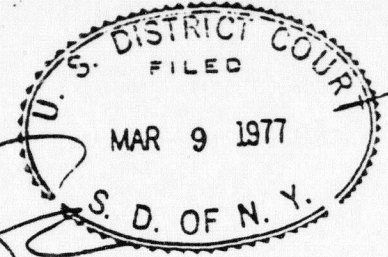
Sworn to before me this

3rd day of February, 1977.


Albert J. Gaynor

STEPHAN GABBER
Notary Public, State of New York
No. 12-151223
County of Queens
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
UNITED STATES OF AMERICA,

Plaintiff,

-against-

DAVID STIRLING, JR.,
WILLIAM G. STIRLING, HAROLD
M. YANOWITCH, EDWIN J. SCHULZ,
and RUBEL L. PHILLIPS,

Defendants.

76 Cr.685

MEMORANDUM

Re: Motion of Defendant
Phillips for a New
Trial

----- x
FRANKEL, D.J.

Upon affidavits comprised largely of hearsay, double hearsay, and "information and belief," defendant Rubel L. Phillips asks that the jury's verdict be set aside and a new trial ordered. The court has reviewed the papers and arguments. For the most part the movant's contentions are amply refuted by the papers in opposition. There is no need for more than brief comments.

1. The main arguments about the exchange of May 28 letters are new ones, never made timely during the trial. Apart from that sufficient flaw, the arguments are not sound. The evidence responded squarely to the charges in the indictment. The assertedly prejudicial part of the summation, to which no objection was made, affords no

(86)

fair ground for complaint when read more fully. The argument concerning 18 U.S.C. §1001, in addition to the Government's cogent responses, appears to overlook that the charge was a conspiracy to violate that section (among other statutes), not the substantive offense.

2. The charge of prosecutorial misconduct has become routine. In this, as in too many cases, it is baseless.

The remote hearsay about what a Marie Taylor might have said was fully known or knowable to defense counsel during the trial and would have amounted at best to trivia. The ready availability of Farmers Home stationery was patent to all at the trial. It is regrettable that counsel should find in such a dubious flyspeck grounds for invoking Brady v. Maryland, 373 U.S. 83 (1963).

The business about Mayor Evers is not more momentous. Apart from the hearsay quality of the moving papers, there is no plausible suggestion of intimidation or other impropriety.

The refusal of an SEC attorney to be interviewed is of equally little help to Phillips. There is no suggestion of improper conduct by any government counsel. The SEC attorney did, in any event, give pretrial information as well as live testimony at the trial. There is nothing in the effort to glean from this aspect a substantial claim of prejudice.

3. The renewed argument for a severance has been considered, and is rejected, again.

4. Defense counsel urge earnestly that the trial judge should sit as a "thirteenth juror" in considering the prayer for a new trial. The court's acceptance of that role is no help to this defendant. As nearly as it is ever possible to divine jurors' reasoning, it may be supposed with some confidence that the twelve official jurors found the testimony of Mr. Phillips incredible at critical points. The court is likewise convinced beyond a reasonable doubt that Mr. Phillips gave false testimony about the vital letter containing Richardson's signature and about his dealings with Richardson on that subject. Decisive matters like these, together with other evidence powerfully adverse to Mr. Phillips, sustain the verdict and expose the details now urged as truly minuscule in the record as a whole.

The motion for a new trial is denied.

So ordered.

Dated, New York, New York
March 9, 1977


U.S.D.J.

United States of America vs.

United States District Court

DEFENDANT

SOUTHERN DISTRICT OF NEW YORK

DAVID STIRLING, JR.

DOCKET NO. 76 CR 685

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

ALBERT J. GAYTOR, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYThere being a ~~verdict~~ verdict of: ☐ NOT GUILTY. Defendant is discharged☒ GUILTY, as to counts 1 thru 9.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of employing a device, scheme, and artifice to defraud in connection with the offer and sale of securities. It was part of said scheme to defraud that the defendant "artificially inflated" revenue and profits by arranging sales of land at artificially high prices. Fraudulently and falsely inflated sales and earnings by arranging for a purported arms-length "sale" of modules which was induced by and based upon a forged commitment letter and by secret side promises and agreements. Unlawfully, wilfully and knowingly, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities did employ devices, schemes and artifices to

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 1 thru 8 to run concurrently with each other. Fined \$10,000 on each of counts 1 thru 8 to run concurrently with each other. Fine is a committed fine and is to be paid during period of probation with arrangements made by probation office.

SENTENCE OR PROBATION ORDER

Imposition of prison sentence as to count 9 is suspended. Defendant placed on unsupervised probation for a period of ONE (1) YEAR to commence upon release from confinement.

Defendant continued on present bail pending appeal.

SPECIAL CONDITIONS OF PROBATION

*defraud. (Title 15, U.S. Code, Sections 77q(a) and 77x and Title 18, U.S. Code, Section 2). Unlawfully, wilfully and knowingly making and causing to be made untrue statements of material facts in a registration statement and omitting to state material facts required to be stated therein and necessary in order to make the statements therein not misleading. (Title 15, U.S. Code, Section 77x and Title 18, U.S. Code, Section 2). Unlawfully, wilfully and knowingly placing and causing to be placed in post office and authorized depositories for mail and causing to be delivered by mail according to the directions thereon. (Title 18, U.S. Code, Section 1341 and 2). Unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to defraud United States and the S. and to violate Sections 1001 and 1341 of Title 18 and Sections 77q(a), 77x, and 78 of Title 15, U.S. Code.

ADDITIONAL CONDITIONS OF PROBATION

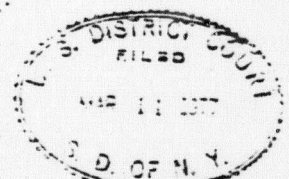
In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT, RECOMMENDATION

DOCKETED AS
JUDGMENT # 76 376
ON 11-11-1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Attorney and other qualified officers.



Date March 11, 1977

United States of America vs.

United States District Court

DEFENDANT

the SOUTHERN DISTRICT OF NEW YORK

WILLIAM G. STERLING

DOCKET NO. 76 CR 685

76 CR 685

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

ALBERT J. GAYNOR, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY.

There being a finding of verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY, as to counts 1 thru 9.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of employing a device, scheme, and artifice to defraud in connection with the offer and sale of securities. It was part of said scheme to defraud that the defendant falsely inflated revenue and profits by arranging sales of land at artificially high prices. Fraudulently and falsely inflated sales and earnings by arranging for a purported arms-length sale of modules which was induced by and based upon a forged commitment letter and by secret side promises and agreements. Unlawfully, wilfully and knowingly, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities, did employ devices, schemes and artifices to

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on each of counts 1 thru 8 to run concurrently with each other. Fined \$5,000 on each of counts 1 thru 8 to run concurrently with each other. Fine is a committed fine and is to be paid during period of probation with arrangements made by probation office. Imposition of prison sentence as to count 9 is suspended. Defendant placed on unsupervised probation for a period of ONE (1) YEAR to commence upon release from confinement.

SENTENCE
OR
PROBATION
ORDER

Defendant continued on present bail pending appeal.

SPECIAL
CONDITIONS
OF
PROBATION

*defraud. (Title 15, U.S. Code, Sections 77c(a) and 77x and Title 18, U.S. Code, Section 2.). Unlawfully, wilfully and knowingly making and causing to be made untrue statements of material facts in a registration statement and omitting to state material facts required to be stated therein and necessary in order to make the statements therein not misleading. (Title 15, U.S. Code, Section 77x and Title 18, U.S. Code, Section 2.). Unlawfully, wilfully and knowingly placing and causing to be placed in post office and authorized depositories for mail and causing to be delivered by mail according to the directions thereon. (Title 15, U.S. Code, Section 1341 and 2.). Unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to defraud the United States and the SEC and to violate Sections 1001 and 1341 of Title 18 and Sections 77c(a), 77x, and 78ff of Title 15, U.S. Code.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends.

COMMITMENT
RECOMMENDATION

MICROFILMED AS

JUDGMENT # 77-280

MAR 15 1977

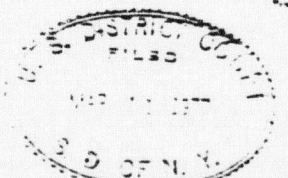
ON March 14, 1977

M. E. Stank

89

Date March 11, 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.



United States of America vs.

United States District Court for
the SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

HAROLD M. YANOWITZ

DOCKET NO. 75 CR 685

75 CR 685

JUDGMENT AND PROBATION CONDITIONS

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
MARCH 11 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL SIDNEY FELDSHUH, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a finding of verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY, as to counts 1 thru 9.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of employing a device, scheme, and artifice to defraud in connection with the offer and sale of securities. It was part of said scheme to defraud that the defendant falsely inflated revenue and profits by arranging sales of land at artificially high prices. Fraudulently and falsely inflated sales and earnings by arranging for a purported arms-length sale of modules which was induced by and based upon a forged commitment letter and by secret side promises and agreements. Unlawfully, wilfully and knowingly, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, in the offer and sale of securities did employ devices, schemes and artifices to defraud. The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 1 thru 8 to run concurrently with each other. Fined \$2,000 on each of counts 1 thru 8 to run concurrently with each other. Fine is a committed fine and is to be paid during period of probation with arrangements made by probation office. Imposition of prison sentence as to count 9 is suspended. Defendant placed on probation for a period of ONE (1) YEAR, to commence upon release from confinement, and subject to the standing probation order of the court. Defendant ordered to submit to psychiatric examination in the next 60 days by a physician and if possible, to be agreed upon between defendant counsel and the Government, at the expense of the Government for such later consideration as may be needed by the court or others involved with the defendant's sentence to a term of imprisonment.

SENTENCE
OR
PROBATION
ORDERSPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

Defendant continued on present bail pending appeal.

*defraud. (Title 15, U.S. Code, Sections 77q(a) and 77x and Title 18, U.S. Code, Section 2). Unlawfully, wilfully and knowingly making and causing to be made untrue statements of material facts in a registration statement and omitting to state material facts required to be stated therein and necessary in order to make the statements therein not misleading. (Title 15, U.S. Code, Section 77x and Title 18, U.S. Code, Section 2). Unlawfully, wilfully and knowingly placing and causing to be placed in post office and authorized depositories for mail and causing to be delivered by mail according to the directions thereon. (Title 18, U.S. Code, Section 1341 and 2). Unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to defraud the United States and the SEC and to violate Sections 1001 and 1341 of Title 18 and Sections 77q(a), 77x, and 78ff of Title 15, U.S. Code.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General or his authorized representative.

COMMITMENT
RECOMMENDATION
DATE

SIGNED BY

U.S. JUDGE

DOCKETED AS
A JUDGMENT
ON March 16, 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

MAR 11 1977
S.D. OF N.Y.

Date MARCH 11, 1977

DAVID STIRLING, JR.'S
SUPPLEMENTAL REQUEST TO
CHARGE THE JURY

With regard to the defendant, David Stirling, Jr., I instruct you not to consider the charges against him as set forth in paragraphs 10 and 11 of Count 1 in the Indictment in so far as they pertain to the so-called Raseac sale. I further instruct you not to consider the charges against him contained in paragraphs 13, 14, and 15 of Count 1 of the Indictment.

I further instruct you not to consider the said charges against him as they may be incorporated into the other counts contained in the Indictment.

United States v. Natelli

527 F. 2d 311 (2nd Cir. 1975)
Cert. Denied, 425 U.S. 934 (1976)

DEFENDANT YANOWITCH'S
SUPPLEMENTAL REQUEST
TO CHARGE
PURSUANT TO UNITED STATES V.
NATELLI
527 F. 2d. (2nd Circ. 1975)
Cert. Den. 425 U.S. 934 (1976)

As to the Defendant Yanowitch, I instruct you not to consider the charges against him as set forth in Paragraphs 10, 11, and 12 of the Indictment as they pertain to the 57-31 and Peter Thune land sales.

I further instruct you not to consider the charges against him as contained in paragraph 15 of the Indictment.

Re: gad

Supplemental Request to Charge
Reliance on Experts

Some of the defendants have contended that they relied upon the advice of experts such as lawyers and accountants in making statements to the SEC and the investing public. Reliance upon the advice of experts may be considered as a circumstance disproving fraudulent intent only if you find that the advice of the expert was given after full disclosure of all relevant and material facts. Conversely failure to disclose all relevant and material facts to those experts whose opinions are associated with statements to the investing public or the Government may be considered by you as probative of fraudulent intent.

United States v. Falcone, -P.2d- (2d Cir.
Nov. 1, 1976) (Cliff Op at 350)

jba2

McCann-direct

A If I am not mistaken, at that time I think Mr. Ed Schulz was the assistant controller.

Q And what did you do when you receive those checks?

A Go get them cashed.

Q What would you do with the cash when you received it at the bank?

A I would bring it back and give it to Mr. Yanowitch.

MR. MACBETH: The government offers 306, 321, 322 and 323 in evidence.

MR. GAYNOR: May I have a voir dire for a couple of questions, your Honor?

THE COURT: Yes.

MR. GAYNOR: May I approach the witness, your Honor?

THE COURT: Yes.

MR. GAYNOR: Thank you.

VOIR DIRE EXAMINATION

BY MR. GAYNOR:

Q Mr. McCann, I wanted to find out, you referred to some skirts or you were asked about skirts, is that right?

A Well, can I explain what I meant by it?

63,000 shares of stock at this price.

Q Do you recall the approximate price of the shares?

A A dollar a share, if I'm not mistaken. I'm not certain of that figure.

Q Will you tell the ladies and gentlemen of the jury what price, if any, it was thought that Pressprich & Company would sell the shares to the public at?

MR. GAYNOR: Objection, your Honor, to the conclusion as to what was thought. I have no objection as to what was said specifically.

THE COURT: Sustained.

I thought you ought to ask about that.

Q What was the discussion with respect to the price of the shares, the price for the shares to be sold to the public?

A Roughly 100 times earnings.

Q I would like to ask if there came a time thereafter when a registration statement was filed with the Securities & Exchange Commission with respect to this public offering?

A Yes, there was.

Q And you recall that that was on or around October 1, 1969?

mcs

Mr. Langone - direct

293

THE WITNESS: Yes

THE COURT: If there is an objection, I will rule on it, not you.

THE WITNESS: Yes, sir.

THE COURT: You just wait till counsel finish their arguments and I'll rule.

Second, I'm going to direct you again, and I trust for the last time, that you must simply answer the question without editorial and without commentary.

THE WITNESS: Yes, sir.

Q. What was the trading price that the first block of shares traded at after the original sale at \$16.50?

A \$34 a share

Q Directing your attention forward in time to the early day of March 1970, did you in that period have a conversation with David Stirling in respect of the allocation of shares to certain individuals on the same subject that you previously described?

A Yes, sir, I did.

Q Will you tell the ladies and gentlemen of the jury what that conversation consisted of, please?

A He again brought up this list of people that he specified earlier and I said to him "I thought we had resolved that point."

mcs

Mr. Langone - Direct

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But he said, "No", that we had not and he thought they had the stock.

I said, "NO. I thought we had an understanding that they weren't to get the stock."

And he said that -- I'm relying on recall at this point, words to the effect that he thought they had it, and I said, "I'll tell you what I'll do. I'll assume they gave me an order to buy the stock at the opening price which they could have bought from anybody. There was no need for them to have any relationship with anybody, call a broker and buy it at \$34 a share" and I said, "I'll honor it. I'll assume that I received that order from them and I will honor that order at \$34 a share."

Q What did he say in response?

A "That's fine."

I might add that we didn't specify --

MR. GAYNOR: I object to what he might add, Your Honor.

THE COURT: Sustained.

Q Do you recall, in addition, what you and Mr. Stirling discussed?

Q We didn't discuss it at the specific price. We talking about giving it to them at the opening sale.

Q Tell the ladies and gentlemen of the jury what, if anything, you did, if you carried out the proposal that you just described concerning or effecting dates for the listing of individuals at the opening sale price?

A We put through confirmations at \$30 a share, and then we

Langone - cross

328

A It depends on what kind of an account it is.

Q Mr. Langone, maybe you can help me and the jury. If I were to purchase a share of stock today from you, when would you give me the stock certificate?

A When you give me the money.

Q When am I required to give you the money?

A Five days hence.

Q And If I gave you the money five days hence when would you issue the stock certificate?

A Normally on that date.

Q So that some four to six weeks elapsed between the time of purchase and the delivery, correct?

A But -- that's unless the customer requests delivery. If the customer doesn't request delivery of the stock and wants me to keep them for safekeeping, I might keep them forever.

Q What did you do here

A I don't know. Whatever the papers say we did, we did.

Q Well, you have read the papers. What did you do?

A What did we do? If you follow through each transaction you will see we either requested delivery instructions or we kept them for safekeeping.

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Langone-cross

329

Q When did you ultimately hand over the shares of stock?

A Whenever the receipt was signed.

Q Do you remember when that was?

A If you get the receipt statements, I'll read them to you.

MR. GAYNOR: Mr. MacDonald, may I have these, please?

MR. MACDONALD: There is my copy. Why don't you use these?

A These aren't signed receipts of the certificates. There were other sets of signed receipt certificates.

MR. GAYNOR: Do we have those, Mr. MacDonald, signed receipts?

THE COURT: Why don't you borrow them from the jury so we can go on. You showed them to him just a minute ago.

MR. GAYNOR: All right.

A Those might be the ones in the back there the gentleman has. That's it. If they are signed, I don't know if they are signed or not.

Q Take a look.

A Yes, sir. Now here these are all signed June 18, 1971, December 13, 1971, December 7, 1971

THE COURT: Those are the dates of the certificates. Now would you go on to your next question, please.

MR. GAYNOR: Yes, s

Langone-cross

330

Q Mr. Langone, at or about this time, February 19, 1970, through March, 1970, was the issuance of stock occasioned by a delay in your company, in your office, in the expediting of stock certificates?

A I don't understand your question, counsellor.

Q Was there some internal reason in your company for the delay of the issuance of the stock some five, six weeks after the day of the purchase?

A There could have been. If we were failing to receive from customers, from brokers, who we bought the stock from.

Q What I'm asking you is, was there some internal reason within your company --

A Probably not. We had a very, very efficient back office.

Q As a matter of fact, it was rather chaotic at this time, wasn't it, Mr. Langone?

A It could well have been, but we were very efficient. All of our accounts balanced. We had no back office problems whatsoever.

Q I don't understand your answer, if I may. You say it may well have been, but you were very efficient. Which one was it?

A If you are a broker and I'm a broker and I buy 100 shares of stock from you for an account and you fail to deliver to me, that doesn't make my back office inefficient.

Q Mr. Langone, I'm referring to this stock here, not from another firm.

1 dwa39

Langone-cross

2 A Yes.

3 Q And this list contained the names of
4 people whom the company recommended as being pur-
5 chasers of the stock?

6 A It's not a question of recommend; it's a
7 question of directed. The company has a right to
8 direct a certain percentage of the offering to people
9 they wish to have the stock.

10 Q As far as you were concerned that did come
11 about? There was a list provided to you?

12 A Yes, sir.

13 Q How many people were on that list, if you
14 remember?

15 A I haven't any idea. It was substan-
16 tial.

17 Q Well, was it a number like 100 or 200?

18 A Fifty. It could have been 50 or 100,
19 maybe, with no trouble at all.

20 Q You wouldn't know whether it was 200 or
21 more?

22 A I have no way of knowing at all, but if
23 it was 200 it wouldn't have surprised me.

24 Q Who received that list on behalf of Press-
25 prich?

dwa41

Langone-cross

A No, no, there was no set form.

Q With respect to your conversations with Messrs. Stirling and Yanowitch at that time, did they indicate to you that they had a considerable amount of experience with regard to a company going public?

A No. Mr. Yanowitch did, because of his prior legal background. He cited that he had done, he had worked on a financing for Page Airways. He was a counsel to them.

Q Did the Stirlings indicate that they had any knowledge of that --

A None whatsoever.

Q -- of the method of going public?

A None whatsoever.

Q Or who could buy stock or who couldn't buy stock?

A No.

Q With regard to that list you had a discussion, did you not, with Mr. Stirling that you testified to?

A Yes.

Q Was Mr. Yanowitch present at that time?

A I think he might have been, to the best of my -- to the best of my recollection, I think he was.

mcs

Livingston - cross

571

1 employee named Spitzer in his handwriting laboratories
2 has prepared the exemplars, marked Government's Exhibit
3 1025 with the signature on the back of that check and in
4 his opinion it was signed by -- the same individual signed
5 both of these exemplars and the signature on the back of
6 the check.
7

8 THE COURT: And the exemplars you just heard
9 asked for by Mr. Gaynor?

10 MR. MacDONALD: Yes.

11 THE COURT: Does that answer your question,
12 Mr. Gaynor?

13 MR. GAYNOR: Yes, it does.

14 Q Mr. Livingston, what are your duties as general
15 secretary of the union?

16 A I'm charged primarily with the responsibility
17 of records, meetings of the members, applications, member-
18 ship.

19 Q And do you do that from your Washington office?

20 A Yes, sir.

21 Q Have you ever been to Avon, New York?

22 A No, sir.

23 Q You don't know David Stirling, do you?

24 A No, sir.

25 Q You don't know William Stirling?

mcs

Livingston - cross

572

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A No, sir.

Q You never had any conversations with David Stirling about this stock which you testified to?

A No, sir.

Q You never had any conversations with William Stirling about the stock which you testified to?

A No, sir.

Q You never had any conversations with William Stirling about this stock that you testified to?

A No, sir.

Q You were not on any stock of Stirling Homex, were you, sir?

A Not that I know of.

Q Did you have any discussions with anyone at Central Trust about the transactions?

A No, sir.

Q So then in the performance of your duties on behalf of the union, did you ever do anything for Stirling Homex Corporation that you would not ordinarily do in the performance of your duties with the union?

A No, sir, I'm not in a position to.

Q All you identified here are the exhibits which have your signature on them or which were sent to you from the Central Trust; is that right?

1 mcs

2 A Yes, sir.

3 Q No other conversations with anyone about those?

4 A No, sir.

5 MR. GAYNOR: I have no further questions.

6 MR. FELDSHUH: Just one question.

7 CROSS EXAMINATION

8 BY MR. FELDSHUH:

9 Q Do you know a Mr. Harold M. Yanowitch?

10 A No, sir, never heard of him.

11 MR. FELDSHUH: Thank you. No further ques-
12 tions.

13 THE COURT: Anything else from Mr. Livingston?

14 MR. MACBETH: No, your Honor.

15 THE COURT: All right, thank you, Mr. Livingston.

16 (Witness excused.)

17 MR. MACBETH: The Governments calls Samuel
18 Ruggiano.

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mcs

Ruggiano - direct

MR. GAYNOR: No objection.

MR. FELDSHUH: No objection.

(Government's Exhibit 734 was received in evidence.)

Q Mr. Ruggiano, turning your attention to the last months of 1969 and the first months of 1970, at that time did you meet a Frank Csapo from time to time?

A Yes, sir.

Q Was Mr. Csapo an employee of Stirling Homex?

A Yes, sir.

Q And did you have a conversation with him at that time?

A Yes, sir.

Q Would you describe to the jury what those conversations were, what he said to you and what you said to him?

MR. GAYNOR: May I have an objection as to what Mr. Csapo said to him?

MR. MACBETH: Mr. Csapo is also mentioned in the bill of particulars.

THE COURT: What was his position in the company; do you know?

THE WITNESS: He was production manager, I believe, vice-president in charge of production. I'm not

mcs Ruggiano - direct

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sure of the exact name.

THE COURT: I will allow it.

Q Would you describe the conversations that you had with Mr. Csapo at that time, what he said to you and what you said to him?

A Is this prior to organization or after we had a union in there?

Q This is after the organization of the plan. It is in the last months of 1969 and the early months of 1970, shortly before the offering of the stock.

THE COURT: Are you trying to elicit conversations with respect to any subject or the weather or football? You can at least point him at the area of discussion you are talking about.

MR. MACBETH: Very well.

Q The conversations relevant to Stirling Homex stock.

A Yes

Q Would you describe the conversations you had with Mr. Csapo relevant to the stock?

A It was just more or less stating that the stock was coming out and that everybody was taking advantage of it, and that is about it.

Q Can you bring back any further detail of what

he said to you and what you said to him?

A Well, at the time I was a little bit hesitant about the stock. I thought probably it might be a conflict of interest.

Q Did you say anything to Mr. Csapo about that?

A Yes, sir, I did.

Q What did you say to him?

A Well, I told him just that I was afraid it might be a conflict of interest.

Q What did he say to you?

A Well, he seemed to think that it wasn't so and we let it go for a while, and I checked with an attorney later.

Q Did you have conversations at that time with David Stirling and Bill Stirling relevant to the stock offering?

A My conversations with the Stirlings were very limited. Most of my business was done with Mr. Csapo.

Q But relative to the stock, did you have conversation with David Stirling and Bill Stirling?

A You are asking me to recall something that is so many years --

THE COURT: Just don't answer if you don't know. If you don't remember you may say so, but tell

mcs

Ruggiano - direct

582

1 stock, and I said, 'I don't know if I can or not.
2
3 I don't know if it is legal.

4 "Oh," he says, 'there is no question about
5 it. We'll check with out attorney.'

6 "Q Who is that attorney -- Yanowitch?

7 "A Yes, Yanowitch.

8 "Q What did Yanowitch say?

9 "A I don't know. I never talked to
10 Yanowitch, but they told me it was perfectly legal."

11 Do you remember being asked those questions and
12 giving those answers?

13 A Yes, sir, you brought it back to my memory.

14 Q And that is a fact your conversation, that
15 is the conversation that you remember having at that time;
16 is that right?

17 A Yes.

18 Q What do you remember happening after those
19 conversations took place?

20 A Shortly thereafter I went to Mr. Csapo and I
21 told him that I -- the three of us were interested in the
22 stock and that we were going to borrow some money and get
23 the stock.

24 Q Who were the three people you were referring
25 to?

1 dwa8

Ruggiano-direct

2 (demonstrating) and he'd walk away, or he'd say something
3 noncommittal.

4 Q Did there ever come a time when he gave
5 any other answer?

6 A Yeah, there was a time he says, "You're
7 all set. Everything is taken care of."

8 Q Do you remember when that happened?

9 A No, I don't.

10 Q Did you have any conversations about getting
11 rid of the stock with anyone at Stirling Homex besides
12 Mr. Csapo?

13 A I don't believe so. There might be offhand
14 conversation in the hallway with somebody as I was
15 walking through, but all my business was done with Mr.
16 Csapo.

17 Q No conversations that you recall distinctly?

18 A Other than the exchange of pleasantries or
19 somebody would mention the stock was up to so-and-so or
20 something like that, but usually as a rule everything
21 I did was through Mr. Csapo.

22 Q Finally, did there come a time when you had a
23 further conversation with people at the Central Trust
24 Company about your loan?

25 A Well, I stopped getting dunning letters and

1 dwal8

Ruggiano-cross

2 Homex in the form of conferring any special benefit
3 on anyone at Stirling Homex, isn't that true?

4 A No, sir.

5 Q Am I right?

6 A You are 100 per cent right.

7 Q It's a fact also that your reports reflect
8 that you stopped at Stirling Homex on many occasions
9 without being directed there and in connection with the
10 business of the union, isn't that true?

11 A Well, if I was going to Buffalo I would swing
12 down and stop in.

13 Q Stirling Homex at that time, insofar as you
14 know in your constant being there, they had a good
15 product?

16 A One of the finest.

17 Q You saw it being produced?

18 A Yes, sir.

19 Q The workers and members of your union were
20 pleased with producing that product?

21 A We were very proud of it.

22 Q And the continuation of that product and
23 the manufacture and installation was for the benefit
24 of your union members in addition to the general public,
25 wasn't that true?

1 A 191
2 Ruggiano-cross

3 A We were very proud of the contract. We
4 were very proud of the arrangements that we had with
5 Stirling Homex. In fact, when their product reached
6 the job site I think the only people that I had to
7 hire is a plumber to bring the water in and an elec-
8 trician to bring the electricity in. We did all the
9 work in the plant. We were very proud of that
10 fact.

11 Q And that was a breakthrough, was it not, in
12 the process of building?

13 A Yes, sir.

14 Q From time to time, Mr. Ruggiano, in connec-
15 tion with your duties with the union did you accompany
16 employers to various town meetings or zoning board meet-
17 ings in connection with applications they had?

18 A I did on one occasion, yes, sir.

19 Q Nothing unusual about that?

20 A No, sir.

21 Q That also --

22 A Well, it was unusual for me.

23 Q But I mean the union does that, though,
24 doesn't it?

25 A Yes, sir, yes, sir.

 Q People other than yourself --

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Q Now, there was nothing sweetheart or nothing favorable in connection with that agreement out of the ordinary as far as Homex was concerned --

A No, sir.

Q -- isn't that right?

A Yes, sir, you are a hundred per cent right.

Q Isn't it a fact that from your knowledge, that that international agreement was a great advance for the union in that it applied throughout the country and obliged Homex --

A Yes, sir.

Q -- wherever they were going to employ union members?

A Yes, sir.

Q Mr. Ruggiano, in connection with the purchases of stock did you know whether any other employee union members at Homex bought stock?

A It would be hearsay but the only thing I can say is the whole local bought some. Everybody in the local union, as far as I know, bought some, or most everybody, but that's hearsay. I didn't see any written evidence. I'm just told this.

Q From what you observed then --

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Ruggiano-cross

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A Pardon?

Q -- you heard and saw that there was a great demand for the stock, isn't that correct?

A Yes, sir.

Q With regard to your decision to go along with the stock, was that based in part upon your experience with the product that Homex was putting out?

A Yes, sir.

Q In connection with your work and that particular product did you have occasion to go to various places in the area in which you had jurisdiction, New York, Maine and other places, to see the product installed?

A Yes, sir.

Q In connection with that installation did you see that it was done in a good and workmanlike manner?

A It was the finest.

Q It was the finest?

A Yes, sir.

Q Sir, knowing all of that did your observations play a part in your decision to make --

A Definitely.

Q -- an investment in the stock of Homex?

1 dwa35

Marsh-direct

2 A Best of my recollection, I don't know any
3 details about their bidding or whether they were
4 successful or not successful on bidding.

5 Q Did you know a Mr. Jack Saferstein?

6 A Yes.

7 Q What connection did he have as far as you
8 knew with the Akron Metropolitan Housing Authority?

9 A Mr. Saferstein was I think the director
10 of the Metropolitan Housing, Akron Metropolitan Housing
11 Authority.

12 Q Do you know if he had any relationships
13 with the Sterling Homex Corporation?

14 A I don't know that.

15 Q Did there come a time when you met a Mr.
16 Frank Csapo, a person connected with Stirling Homex?

17 A Yes.

18 Q Would you tell the ladies and gentlemen
19 of the jury if you and Mr. Csapo ever had occasion
20 to talk about either labor activities in and around
21 Akron, Ohio by Stirling Homex Corporation or about
22 the purchase of its stock or both?

23 A My only relationship with Mr. Csapo, Mr.
24 Csapo was one of the -- he was a construction repre-
25 sentative of Stirling Homex Corporation, and I met him,

dwa36

I don't know exactly when but I'm sure that somewhere about that time, as a representative of Stirling Homex Corporation.

Q Can you tell the ladies and gentlemen of the jury what dealings you had with him in that capacity as you have described of representing Stirling Homex?

A I never had any dealings with Mr. Csapo.

Q How about the second part of my question, if I can individualize it and repeat it: did you ever talk to Mr. Csapo about buying stock in the Stirling Homex Corporation?

A Best of my recollection, no.

Q Would you look before you, Mr. Marsh, at the exhibit which has been marked 569 for identification and tell us, first of all, if it consists of an envelope and a letter stapled together under an exhibit tag.

MR. GAYNOR: Your Honor, may I just ask, can we have just a slight pause at the mention of an exhibit so I can locate it on my exhibit list and get a copy of it, please? I think that will expedite it if I can just have that.

THE COURT: All right. I don't think we are barreling ahead very fast. He's just going to

cwa37

Marsh-direct

look at it and say what it is and in that time you will discover it.

MR. MAC DONALD: I think it's been handed to him. It's underneath your left hand, Mr. Gaynor.

MR. GAYNOR: I'm looking at my list. I have to keep a record of that which goes in evidence and which doesn't, Mr. MacDonald.

Okay.

THE WITNESS: Repeat the question, please?

MR. GAYNOR: Thank you, your Honor.

BY MR. MAC DONALD:

Q Can you identify for the ladies and gentlemen of the jury anything about the envelope which forms a part of 569?

A This envelope here indicates my address, an address that I lived at up in the left-hand corner. Also, Mr. Frank Csapo's and Stirling Homex Corporation, East River Road, Avon, New York.

Q Now, would you look, please, at the attachment, the letter, and tell the ladies and gentlemen of the jury, if you can, whether you can identify any portion of that document. Maybe you could start with the name at the bottom. It's not a signed letter, is it?

dwa38

A No, this is a communication that I have before me which has no signature on it, and refers to "Mitch," which I am called by nickname.

Q Are you able to identify any additional portions of the letter?

A There is names on this letter that I recognize.

Q Anna Rapovy?

A There's an Anna Rapovy on this letter, yes.

Q Who is that?

A Anna Rapovy is my mother-in-law.

MR. GAYNOR: May we have that offered in evidence before it is read from, your Honor, please?

MR. MAC DONALD: We offer in evidence Exhibit 569.

MR. FELDSHUE: No objection.

(Government's Exhibit 569 was received in evidence.)

BY MR. MAC DONALD:

Q Mr. Marsh, would you read the letter, please?

A In its entirety?

dwa39

A 198
Marsh-direct

2 Q Yes, sir.

3 A This document is dated November 27, 1969,
4 stamped received December 1, 1969.5 "Mr. Frank Csapo, Stirling Homex Corpora-
6 tion, 1150 East River Road, Avon, New York 14414.

7 "Dear Frank:

8 "Here are the following names that we
9 talked about. Irene E. Mitchell, Social Security
10 No. 288-14-7829, 5 Randolph Court, Hanover,
11 Pennsylvania 17331. All correspondence concerning
12 Irene E. Mitchell to be mailed to - Mrs. Evelyn Konyha,
13 1830 Ledge Road, Medina, Ohio. Anna Rapovy -
14 Social Security No. 296-10-7122. 10 Hillside Avenue,
15 Ludlow, Pennsylvania. All correspondence concern-
16 ing Anna Rapovy to be mailed to - Mrs. Mary Marsh,
17 1874 Lucrettia Drive, Girard, Ohio 44420. Mrs.
18 Judy Heller, Social Security No. 286-46-0173.
19 10 Hillside Avenue, Ludlow, Pennsylvania. All cor-
20 respondence concerning Judy Heller to be mailed to -
21 Mrs. Marge Jacobs, 515 Hillman Road, Akron, Ohio
22 44312. I will call you in a few days to confirm
23 this letter.

24 "Mitch."

25 Q The addresses for Mrs. Anna Rapovy and

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Marsh - cross

642

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2 Q That would be from the time the demolition
3 was completed?

4 A From the time that I start working on the house.
5 If I start working on a house and it took me -- to cut
6 all the lumber and the rafters -- it all depends on how
7 big the house is, how many units, what-have-you.

8 Q What I was trying to elicit, Mr. Marsh, was
9 that you can't build a stick house, as it is called, if
10 there was a house there or some housing before. It has
11 to be demolished?

12 A Right. I'm talking about an individual.
13 I'm not talking about a project. This same project
14 would have taken a year at least, a minimum of a year.

15 Q So then is it fair to say, in terms of
16 measuring it against a year, this project was overnight?

17 A Yes.

18 Q Did you ever have any dealings with regard to
19 any stock that you had or that Mr. MacDonald pointed out
20 to you? Did you have any dealings with Mr. David Stirling
21 about that stock?

22 A No, sir.

23 Q Did you ever have any dealings with Mr.
24 William Stirling about that stock?

25 A No, sir.

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Marsh - cross

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Q Did you ever have any knowledge about any
purported loans at the Central Trust Company?

A No, sir.

MR. GAYNOR: May I have your indulgence, if
your Honor please?

THE COURT: Yes.

(Pause.)

MR. GAYNOR: I have no further questions.

MR. FELDSHUH: I have one question, your Honor.

CROSS EXAMINATION

XX

BY MR. FELDSHUH:

Q Mr. Marsh, do you know Harold M. Yanowitch,
sir?

A No, sir.

MR. FELDSHUH: Thank you very much.

No further questions.

MR. MacDONALD: No redirect.

THE COURT: Thank you, Mr. Marsh.

(Witness excused.)

MR. MACBETH: Mr. Elmer Jacobs.

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dwa5

Jacobs-cross

1 A Well, I did one time threaten to shut the
2
3 job down because of some problems because the superin-
4 tendents on the job site weren't taken care of.

5 Q Is it a fair statement to say that if,
6 during the course of a dispute and a contract, settle-
7 ment doesn't seem to be in the offing or that you are
8 unable to mediate the problem one of the techniques
9 used by the union is to threaten to shut down unless
10 the agreement is carried out, in your view?

11 A Yes.

12 Q That, too, is a normal procedure, is it
13 not?

14 A Yes, sir.

15 Q It may be one of almost last resort, but
16 that is one, isn't it?

17 A Yes, sir.

18 Q Nothing unusual about that in connection
19 with Stirling Homex?

20 A No, sir.

21 Q You never talked to David Stirling about
22 any stock that you had in Stirling Homex, did you?

23 A No.

24 Q You never had any dealings with David Stirl-
25 ing on Homex stock at all, did you?

dwa6

Jacobs-cross

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A No, sir.

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Q You never talked to William Stirling about any stockholdings that you had in Stirling Homex, did you?

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A No, sir, not to my knowledge.

7

8

Q Did you ever sign a note at the Central Trust Company for a loan?

9

A No, sir, never made an application.

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Q Is it a fair statement to say that you never gave any special treatment or any special favors to Stirling Homex in connection with your work with the union?

14

A No, sir.

15

Q Is that a correct statement?

16

A Yes.

17

MR. GAYNOR: I have no further questions,

18

your Honor.

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CROSS EXAMINATION

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BY MR. FELDSHUE:

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Q Mr. Jacobs, do you know a Harold M. Yanowitch?

23

A No, sir.

24

MR. FELDSHUE: No further questions, your

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Honor.

1 dwal7

Konyha-cross

672

2 A Yes, sir.

3 Q So that if anything happens to the presi-
4 dent you as first vice president, general vice president,
5 would exercise his duties, is that right, sir? Is
6 that a fair statement?

7 A Yes, according to the constitution if some-
8 thing happened to him I would be the general presi-
9 dent.

10 Q Now, sir, going back to 1968, your duties
11 at that time were confined to a district which included
12 Ohio, is that right?

13 A Yes, sir.

14 Q What was your title at that time?

15 A General representative of the United
16 Brotherhood, appointed by the general president.

17 Q So that your affiliation was with the
18 international union, was it not?

19 A Correct.

20 Q Now, sir, did you upon those days have occa-
21 sion to negotiate with Stirling Homex with regard to local
22 conditions?

23 A No, sir.

24 Q At any time from 1968 through 1972 did
25 you have such occasion to negotiate with Stirling

1 dwal8 Konyha-cross

2 Homex as to local conditions?

3 A No, I did not.

4 Sir?

5 A I did not.

6 Q During that period of time had any union
7 matters come to your attention as the general repre-
8 sentative in that district with regard to Stirling
9 Homex?

10 A No, sir.

11 Q Sir, when for the first time did you have
12 occasion to hear about Stirling Homex?

13 A Well, I read in the newspapers, No. 1,
14 and we have also a publication that comes out for the
15 international office advising us of the modular com-
16 panies that are assigned to agreements, and that was
17 the first time that I knew about it, outside of the
18 newspapers.

19 Q Sir, in connection with your contacts with
20 the international union did you have occasion to meet
21 with or be in touch with the then Secretary of Housing
22 and Urban Development, former Govern Romney?

23 A No, sir, not directly, but in fact --

24 Q Do you know of your own knowledge, sir,
25 of any comments that Governor Romney made with regard

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Konyha - cross

Q During that period of time, Mr. Konyha, you had continually worked for this carpenter's union; is that right?

A Yes, sir.

MR. FELDSHUH: I have no further questions.

MR. GAYNOR: I have only two questions.

May I stay here?

MR. FELDSHUH: Just one question, if I may.

Excuse me, Mr. Gaynor.

MR. GAYNOR: Surely.

BY MR. FELDSHUH:

Q Do you know a man by the name of Harold M. Yanowitch?

A What was that name?

Q Harold M. Yanowitch.

A No, sir.

Q You have no memory of ever speaking to a man by the name of Harold M. Yanowitch; is that right?

A No, sir.

MR. FELDSHUH: Thank you, sir.

CROSS EXAMINATION

BY MR. GAYNOR:

Q Mr. Konyha, did you ever speak to David Stirling about your ownership of Stirling Homex stock?

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Konyha - cross

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A No, sir.

Q Did you ever speak to William Stirling about your ownership of Stirling Homex stock?

A No, sir.

MR. GAYNOR: I have No further questions.

MR. MACBETH: No redirect, your Honor.

THE COURT: All right, thank you, Mr. Konyha.

MR. GAYNOR: I'm sorry. May I just ask one more question, your Honor?

BY MR. GAYNOR:

Q I know you are not a lawyer, Mr. Konyha, but maybe you can help me. You mentioned Blue Sky laws. Does that apply to everyone or just union officials; do you know?

A It applies, I believe, to everybody in the State of Ohio. I was never a purchaser of a stock prior to that time.

MR. GAYNOR: Thank you very much.

(Witness excused.)

MR. MACBETH: The Government calls Joseph J. Catalfano.

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Catalfano - direct

688

Q Now, turning your attention to late 1969, the early months of 1970, did you have any conversations at that time about Stirling Homex stock?

A I had a conversation with Mr. Csapo.

Q What is it that you said to Mr. Csapo and what Mr. Csapo said to you?

A At the time the stock was coming out we asked him if he could get some stock at the opening rate, which we had an inkling it was \$16.50 coming out.

Q That is the offering price?

A The offering price.

Q What did Mr. Csapo say to you?

A He says "I can't promise you anything."

He says, "I'll do what I can."

Q After that did you have further conversation with Mr. Csapo?

A A couple of times, yes. I called him several times. At one time he indicated that he thought we were going to get it. Then he said, "I'm sorry, I can't promise you nothing."

Q And that continued for some period of time, these conversations back and forth, your request to him and his response to you?

A Right.

MCS

CROSS EXAMINATION

BY MR. FELDSHUIH:

Q Mr. Catalfano, am I pronouncing your name correctly, sir?

A Yes, sir.

Q Now, sir, back in 1968, as you testified, you were business manager to the Carpenter's District Council in the City of Rochester; is that correct?

A Yes, sir

Q In that connection did you have any dealings with Mr. Csapo insofar as the union conditions of Stirling Homex was concerned?

A No, sir, that was not under my jurisdiction.

Q Ans the fact is that to your best recollection back in 1968 you never had signed an agreement with Stirling Homex, which agreement was drawn up or required your signature insofar as the labor conditions of Homex were concerned?

A No, we had nothing to do with the plant.

Q Then I take it, sir, with regard to your contacts with Csapo, they were outside of the plant; isn't that right, sir?

A Yes, mostly on the phone.

Q And it had nothing to do with Mr. Csapo having

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A 209
Catalfano - cross

697

Q All right. I said was Mr. Harold Cohen, your attorney, the District Council's attorney, who first suggested that you buy Homex stock: isn't that right?

A That is correct.

Q And it was based on your discussions with him that you asked Mr. Csapo if he could possibly arrange to have you buy stock?

A That is right.

Q It was after that that Mr. Csapo said you couldn't possibly buy it at the opening price; isn't that so?

A He said, "I don't know. I'll try, but I can't guarantee you anything."

Q So the fact is you did not get any stock on opening; isn't that correct?

A That is correct.

Q As a matter of fact, as far as you were concerned you never did get any stock at all; isn't that true?

A No, sir, I never did.

Q Did you ever talk to Mr. Harold M. Yanowitch with regard to your buying any stock in Homex?

A No, sir.

Q Do you know Mr. Yanowitch?

1 mcs

2 A I don't know him personally, no.

3 Q You just heard of him, possibly; is that
4 right?

5 A I heard of him, right.

6 Q You never met him or talked with him?

7 A No, sir.

8 Q You never discussed any union matters with
9 him or anybody connected with him?

10 A No, sir.

11 Q Mr. Catalfano, did you receive any communica-
12 tion from the Central Trust Company with regard to your
13 borrowing any money?

14 A No, sir.

15 Q With respect to the product that Stirling
16 Homex was putting out in 1969 and 1970, you were familiar
17 with that product, were you not, sir?

18 A Yes, sir.

19 Q And you knew the reputation of Homex with
20 regard to being a builder of modules and fast construction?

21 A Yes, sir.

22 Q Was that a good reputation, sir?

23 A Oh, yes.

24 Q Did that knowledge of yours in part --
25 was that the basis for your decision to want to buy

1 mcs
2 MR. FELDSHUH: I hae no further questions,
3 your Honor.

4 Thank you very much.

5 MR. GAYNOR: I have two.

6 May I stay here?

7 THE COURT: Yes.

8 CROSS EXAMINATION

9 BY MR. GAYNOR:

10 Q I think this may have been asked of you, Mr.
11 Catalfano, but did you ever discuss your obtaining a
12 Stirling Homex stock with David Stirling?

13 A No, sir.

14 Q Do you know David Stirling?

15 A I know him by sight. I met him once as he
16 was coming out from his office. One day I was
17 introduced to him, and that is the only time I ever met
18 the man.

19 Q Dkd you ever have a conversation with Mr.
20 William Stirling about your obtaining any stock in Stirling
21 Homex?

22 A No, sir.

23 Q Do you know Mr. William Stirling?

24 A Is he the gentleman that died, the elderly
25 gentleman, his dad?

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Catalfano - cross

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Q That was David, Sr.

A Oh, no. No, I don't know the other gentleman.

MR. GAYNOR: Thank you, I have no further questions, your Honor.

THE COURT: Thank you. You are excused.

(Witness excused.)

MR. MACBETH: The Government calls Mr. Peter Cottrell.

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P E T E R C O T T R E L L , called as a witness in behalf of the Government, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MACBETH:

Q Mr. Cottrell, where do you live?

A Mount Vernon, New York.

Q How long have you lived there?

A 16 years.

Q Turning your attention to July of 1971, did there come a time when you bought shares of Stirling Homex stock?

A Yes, I bought some shares of Stirling Homex preferred stock at the time that it was first issued.

cs6

1 well, and my other experiences with him had been quite
2 reliable, and I told him that I was interested.

3 Q What happened next?

4 A Shortly thereafter there was a meeting in
5 his office, in Mr. Yanowitch's office in Rochester, at which
6 Mr. Falcone was present, who I met at that meeting.

7 Q Yes, sir?

8 A There was another possible investor present
9 there and Mr. Falcone said he had a fourth person.

10 MR. FELDSHUH: Objection to anything Mr.
11 Falcone said.

12 MR. MacDONALD: I believe Mr. Falcone, who is
13 the next witness, or one thereafter -- in any event, it
14 is in Mr. Yanowitch's presence, if he can get through
15 the list of attendees.

16 THE COURT: Overruled.

17 Q Who else was present?

18 A As I said, Mr. Falcone was present, I was
19 present. I believe there was a third investor present
20 and Mr. Falcone said he had another person who was
21 interesting in participating in this venture.

22 Q Was the third man present named Feinglass, by
23 any chance?

24 A Yes, Jack Feinglass, that is correct.

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Q Would you keep your voice up, Doctor?

A Jack Feinglass.

Q Would you tell the ladies and gentlemen what Mr. Yanowitch said to the assembled persons and what was said in response?

A He told us that there was some land available called Hollyrood, a suburb of Syracuse, New York where there were 15 or 16 acres of land commercial zoned that was available that would support an excellent -- would be an excellent location for a shopping center. I would require approximately a \$20,000 investment on each of the four parts and the cost of the land would be approximately -- would be \$425,000 for the 15 or 16 acres of land.

He also told us at that time that Gulf Oil had an option on an area of approximately a half acre, an option to buy it at \$100,000 if the shopping center were built.

As I recall, this was the sum and substance of our conversation. The other thing he told us was that inasmuch as he would be representing the sellers in this that it would be unethical or it would be a conflict of interest for him to represent us in this particular matter, and he suggested that we consider having another attorney. We talked a bit about it and we didn't have

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Shapiro-direct

1 A Well, after he left my office I called Mr.
2
3 Yanowitch about this and told him that I had just
4 spoken with a Mr. Beckerman, who brought to my atten-
5 tion the fact that the zoning in this area had a very
6 serious restriction, and this would be serious from a
7 standpoint of the shopping center that we were con-
8 sidering building.

9 And as I recall, Mr. Yanowitch said to me --
10 well, the sum and substance was that he said the
11 Stirlings have done a lot of building in that area; they
12 certainly know the zoning board quite well, and he
13 felt that this restriction could be removed.

14 The second thing was that there was a Gulf
15 option to purchase land, a half acre at \$100,000, and
16 he felt pretty certain that they would be exercising
17 this option, although he couldn't guarantee their exer-
18 cising this option; and the other thing was that he
19 felt that if we went ahead with this venture, as far
20 as he was concerned he would see to it that if we
21 weren't able to build the shopping center that we would,
22 if we couldn't find the buyer for the land he would
23 find a buyer for us and we'd lose no money on the
24 venture.

25 Q Do you recall anything further of that

1
2 THE COURT: Which one?

3 MR. FELDSHUH: 102.

4 THE COURT: That is not among those that he
5 mentioned. Let's take care of the ones he mentioned
6 just now so we can go on.

7 Is there any objection to any of these?

8 MR. EATON: No.

9 MR. FELDSHUH: No.

10 THE COURT: They will be received when the
11 clerk gets back to his desk.

12 Before we get the jury in and the doctor on the
13 stand, which I will ask Government counsel to do before
14 we get the jury, let me raise one other 30-second question.

15 I noticed starting through the Government's
16 requests to charge that the first one is a request that
17 the Court marshal the evidence. I commonly get that
18 request from the Government. I commonly am not
19 sympathetic to it because it frequently seems to me like
20 an extra summation in a criminal case for the prosecution.

21 However, we all know that there have been
22 cases in the Circuit suggesting that a defendant's rights
23 may require a marshaling of the evidence where there are
24 differences in their situations in a conspiracy case,
25 especially, and where the Circuit believes that perhaps

dwa4

Shapiro-cross

1 dwa4 Shapiro-cross 799
2 ment of surgery for Rochester General. I was not the
3 director.

4 Q I didn't quite hear the hospital, but did
5 you have any connection with the Northside Hospital,
6 sir, in Rochester?

7 A That's the Rochester General. That's a
8 division of the Rochester General Hospital.

9 Q I see, sir.

10 Now, sir, during the course of your profes-
11 sional life you did have occasion to enter into various
12 business deals, did you not?

13 A I did.

14 Q With regard to business deals, directing
15 your attention to prior to 1969, Mr. Yanowitch acted
16 as your attorney, did he not?

17 A He did, that's correct.

18 Q In addition to that, during that period of
19 time prior to 1969, in words or substance, didn't you
20 tell Mr. Yanowitch to look out for deals in which you
21 could invest money?

22 A Yes, I did. That's correct.

23 Q In the course of his looking out for deals
24 in which you could invest money did you not have as a
25 consideration the tax shelter that that deal would give

dwa

Shapiro-cross

817

1 knew that you were going to be paid \$80,000 in con-
2 nection with an investment as to which you had
3 paid in 63,000, right?

4
5 A That is correct.

6 Q Sir, based upon your experience in your
7 investments that was a pretty good investment. You
8 got your money out within a very short period of time,
9 wasn't it?

10 A Yes, but it wasn't a guarantee. We took
11 a chance on it.

12 Q I didn't hear your answer, sir.

13 A It wasn't a guarantee when we invested,
14 that the option wasn't exercised.

15 Q But it turned out great, didn't it?

16 A It did.

17 Q Isn't that fair?

18 All right. Not only did you get your
19 money back but you also made some dollars on top
20 of it, right?

21 A That's correct.

22 Q Now, in the course of your conversation with
23 Mr. Yanowitch in his private office, Mr. Yanowitch said
24 to you, in substance or in words, "I feel that Gulf
25 Oil will exercise its option," isn't that correct?

dwa

Shapiro-cross

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2

A That is correct.

3

Q And he didn't say to you, "I guarantee that

4

Gulf Oil will exercise its option."

5

A No, he didn't.

6

Q Is that right, sir?

7

A No, he didn't.

8

Q So that feeling that Mr. Yanowitch expressed

9

to you at a first meeting in 1969, June of 1969, turned

10

out that his feeling was correct?

11

A That is correct.

12

Q Did you know, sir, whether a purchase offer

13

was in fact signed by you -- when I say "you," again,

14

I don't mean you personally, I mean the Raseac Corporation

15

on or about June 25, 1969? Did you know that?

16

A A purchase what?

17

Q Offer, o-f-f-e-r, offer, to buy that land.

18

A I don't recall the date. It's -- if

19

there were an offer it would have conditions in it,

20

I'm sure, because we discussed conditions with Mr. Becker-

21

man.

22

MR. FELDSHUH: I'll reserve this until just

23

a little bit later, your Honor, and I'll go on.

24

Q Did you know, sir, that one of the state-

25

ments in this purchase offer was a representation that

- 1 dwa Shapiro-cross 819
- 2 Gulf Oil Corporation had an option to purchase a part
- 3 of the property that was being sold to you? Did you
- 4 know that, sir?
- 5 A I don't recall this.
- 6 Q The fact that Gulf Oil had this option was
- 7 a very important element to you?
- 8 A Yes, it was.
- 9 Q It was a inducing factor, was it not?
- 10 A It was one of the inducements, that's cor-
- 11 rect.
- 12 Q Now, sir, shortly after Mr. Beckerman be-
- 13 came counsel he investigated the property, did he not?
- 14 A He did, that's correct.
- 15 Q He made a very thorough investigation, isn't
- 16 that true?
- 17 A I believe he did.
- 18 Q You, as you testified on your direct
- 19 examination -- he met with you?
- 20 A Yes, that is correct.
- 21 Q Actually came to your office to discuss that
- 22 situation?
- 23 A That is correct.
- 24 Q Now, you knew that Mr. Beckerman had a
- 25 habit of making notes, did you not, of the events that

cs8

Shapiro - cross

as under certain other circumstances) you authorized and approved the completion of this transfer."

Now, I ask you, sir, having received this closing statement from Mr. Beckerman, that is a true and correct report of the events as they occurred; isn't that so, sir?

A There is one event that occurred in between that I described yesterday that was not part of the written report, sir. What you have given me is correct, in all that you have given.

Q That is correct, sir, isn't it?

A That is correct, except for the conversation I had with Mr. Yanowitch.

Q Now, with regard to the conversation you had with Mr. Yanowitch, you didn't understand, did you, that Mr. Yanowitch was committing Stirling Homex Corporation; is that a fact, sir?

A Is that what, sir?

Q Upon those alleged conversations that you had with Mr. Yanowitch, you had no understanding, did you, that Mr. Yanowitch was committing the Stirling Homex Corporation to any guarantee or indemnification?

A No, this was never stated to me, that is right.

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Shapiro - cross

A I believe it was \$425,000.

Q 425,000?

A Yes.

Q You are right and I am wrong. The purchase price was \$425,000. I'm sorry, sir.

Now, sir, prior to this time you had a number of real estate investments, had you not?

A Only --

Q As you testified?

A I had that one shopping area and a building, yes.

Q You were familiar with mortgages, were you not, on real property?

A Insofar as they involved those two projects, I was an investor in them. That is my familiarity, yes.

Q Right. So you did know, did you not, that when it came to investing in real estate that with regard to such investments, particularly in raw land, you tried to put up as little cash as possible; isn't that right?

A That is what the accountant recommended, yes, sir.

Q And you tried to get as big a mortgage as you could; right?

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Shapiro-cross

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2 Q And then you were going to get from the seller
3 what is known as a "purchase money mortgage," is that
4 right, sir, you were going to get a purchase money
5 mortgage of \$302,000?

6 A Well, there were mortgages there. I'm
7 not that familiar with all this. You make me out to
8 be an expert but I'm not.

9 Q Look at this closing statement, sir, that
10 you received from Mr. Beckerman, your attorney.
11 Isn't it a fact that of this \$425,000 you were only
12 going to -- you were going to get back a mortgage?
13 They were saying to you, "You don't have to pay us
14 this \$302,000 right away"?

15 A That is correct.

16 Q And it was the intention of not paying
17 that \$302,000 to give you time to develop the land,
18 isn't that so?

19 A That is correct.

20 Q So it was a usual and an ordinary venture
21 experience with regard to the purchase of raw land,
22 was it not, sir?

23 A That's correct.

24 Q Now, sir, with regard to shopping centers,
25 you have seen shopping centers where there is no

1 dwal5

Shapiro-cross

2 testing it also to the extent that I stated that it's
3 a recollectionbut with a serious situation like that
4 I think I would recollect what the implication was.

5 Q Well, every patient who undergoes surgery
6 and their families, they have a serious situation,
7 don't they, sir?

8 A Yes, that's right, but I don't guarantee
9 them the result.

10 Q Right. And of course nobody said you
11 guaranteed results, doctor. But you are asked to
12 express your opinion, and I'm sure you have done so
13 and you have done it in good faith.

14 MR. FELDSHUH: On that note, your Honor,
15 I am finished.

16 MR. GAYNOR: May I, your Honor?

17 CROSS EXAMINATION

18 BY MR. GAYNOR:

19 Q Doctor, you never had any conversations
20 with David Stirling, did you?

21 A I did not.

22 Q You never had any conversations with William
23 Stirling, is that correct?

24 A I did not.

25 Q You never had any correspondence with them,

1 dwal6 Shapiro-cross

2 isn't that true?

3 A I did not.

4 MR. GAYNOR: I have no further questions,
5 your Honor.

6 THE COURT: Anything else?

7 MR. EATON: No, your Honor.

8 THE COURT: Any redirect?

9 MR. MAC DONALD: No redirect.

10 (Witness excused.)

11 MR. MAC DONALD: We call Don Barbato
12 as our next witness.

13 DONALD BARBATO, called as a wit-
14 ness by the government, being first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MAC DONALD:

18 Q Mr. Barbato, would you tell the ladies
19 and gentlemen of the jury where you live and how you
20 are currently employed, sir?

21 A I live in Rochester, New York. I am employed
22 as a restaurateur at the present time. I also indulge
23 in real estate to some extent.

24 Q How long have you been in the restaurant
25 business?

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JUN 8 1977

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